Forest Appeals Commission

Annual Report

2010

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Dear Ministers:

I respectfully submit herewith the annual report of the Forest Appeals Commission for the period January 1, 2010 to December 31, 2010.

Yours truly,

Alan Andison
Chair
Forest Appeals Commission

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Message from the Chair

I am pleased to submit the sixteenth Annual Report of the Forest Appeals Commission.

During the past year, the Commission has received, heard and decided a variety of appeals that have a significant effect on the forest industry, the environment, and the economy of British Columbia. Included in those appeals are issues involving the salvage of insect-damaged timber, unauthorized timber harvesting that caused damage to a fish-bearing stream, road construction costs, and the amount of stumpage that licensees are obligated to pay when harvesting Crown timber. In addition, a large number of outstanding stumpage appeals that were being held in abeyance to allow the parties time to negotiate, were settled without the need for the Commission to hear the appeals.

In 2010, there was further expansion of the responsibilities of the general office which operates the Commission, when the administration and operation of two tribunals was added to the office. The addition of these tribunals is attributable to the success of this shared services model. Having one office providing administrative support for a number of tribunals gives each tribunal greater access to resources while, at the same time, reducing administrative and operating costs and allowing the tribunals to operate independently of one another.

The office now operates and supports the Financial Services Tribunal. That tribunal already existed, but was operated by the Ministry of Finance. In addition, a new tribunal was established in October of 2010, the Oil and Gas Appeal Tribunal. This tribunal is more directly linked to the Commission, as the Chair of the Commission is also the Chair of the Oil and Gas Appeal tribunal, and all members of the Commission have also been appointed to the new tribunal.

The Commission office now administers eight tribunals:

- the Forest Appeals Commission
- the Environmental Appeal Board
- the Oil and Gas Appeal Tribunal
- the Community Care and Assisted Living Appeal Board
- the Hospital Appeal Board
- the Industry Training Appeal Board
- the Health Professions Review Board, and
- the Financial Services Tribunal

The Commission's membership experienced several significant changes to its roster of qualified professionals during the past year. A number of valued members left the Commission during this reporting period, including the vice-chair of the Commission, David Ormerod. Mr. Ormerod was initially appointed to the Commission in 1996 and has been an extremely valuable and supportive tribunal member over the years.

In addition, two other long-term members left the Commission: Phillip Wong, a member since 2002, and Margaret Eriksson, also a member since 2002.

I am very pleased to welcome three new members to the Commission who will complement the expertise and experience of the outstanding professionals on the Commission. These new members are R. O'Brian Blackall, J. Tony Fogarassy and Douglas VanDine. These new appointees were also appointed to the Oil and Gas Appeal Tribunal and the Environmental Appeal Board.

I am very fortunate to have on the Commission a wide variety of highly qualified individuals including professional biologists, foresters, agrologists, engineers, and lawyers with expertise in the areas of natural resources and administrative law, and mediation. All of these individuals, with the exception of the Chair, are appointed as part time members and bring with them the necessary expertise to hear matters ranging from timber valuation to environmental damage arising from forestry road construction and maintenance and its impact on fish-bearing streams.

Finally, I would like to take this opportunity to thank the members of the Commission and the staff for their continuing commitment to the work of the Commission.

Alan Andison
Chair

IN MEMORIAM

Sadly, on December 26, 2010, Margaret Eriksson passed away after a courageous five-year battle with cancer. Margaret contributed many years of service to both the Commission and the Environmental Appeal Board, and she continued to hear appeals and write decisions even as she fought cancer. The Commission's members and staff will remember and miss Margaret's thoughtful and principled approach to her work.

Introduction

The Forest Appeals Commission is an independent tribunal that was established under the *Forest Practices Code of British Columbia Act* (the "*Code*"), and is continued under the *Forest and Range Practices Act*.

The information contained in this report covers the twelve-month period from January 1, 2010 to December 31, 2010.

This report describes the structure and function of the Commission and how the appeal process operates. This report also contains:

- the number of appeals initiated during the report period;
- the number of appeals completed during the report period (i.e., final decisions issued);
- the resources used in hearing the appeals;
- a summary of the results of appeals completed in the report period;
- an evaluation of the review and appeal processes; and,
- recommendations for amendments to the legislation, from which it hears appeals.

Finally, a selection of the decisions made by the Commission during the report period has been summarized, legislative amendments affecting the Commission are described, and the relevant sections of applicable legislation are reproduced.

Decisions of the Commission are available for viewing at the Forest Appeals Commission office, on the Commission's website, and at the following libraries:

- Legislative Library
- University of British Columbia Law Library
- University of Victoria Law Library
- British Columbia Courthouse Library Society
- West Coast Environmental Law Association Law Library

Detailed information on the Commission's policies and procedures can be found in the Forest Appeals Commission Procedure Manual, which may be obtained from the Commission office or viewed on the Commission website. If you have questions, or would like additional copies of this report, please contact the Commission at:

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The Commission

The Forest Appeals Commission is an independent administrative tribunal, which provides a forum to appeal certain decisions made by government officials under the *Code*, the *Forest Act*, the *Forest and Range Practices Act*, the *Private Managed Forest Land Act*, the *Range Act* and the *Wildfire Act*. The Commission is also responsible for providing the Lieutenant Governor in Council (Cabinet) with an annual evaluation of appeal and review processes, and with recommendations for amendments to forest legislation and regulations respecting reviews and appeals.

The Commission makes decisions respecting the legal rights and responsibilities of parties that appear before it and decides whether the decision under appeal was made in accordance with the law. Like a court, the Commission must decide appeals by weighing the evidence, making findings of fact, interpreting the legislation and common law, and applying the law and legislation to the facts.

In carrying out its functions, the Commission has the power to compel persons or evidence to be brought before the Commission. The Commission also ensures that its processes comply with the common law principles of natural justice.

Appointments to the Commission and the administration of the Commission are governed by the *Administrative Tribunals Appointment and Administration Act*.

Commission Membership

Commission members are appointed by the Lieutenant Governor in Council (Cabinet) under section 194(2) of the *Code*. The members appointed to the Commission are highly qualified individuals, including professional foresters, professional biologists, professional engineers, professional agrologists and lawyers with expertise in the areas of natural resources and administrative law. These members apply their respective technical expertise and adjudication skills to hear and decide appeals in a fair, impartial and efficient manner.

The members are drawn from across the Province. Commission membership consists of a full-time chair, one or more part-time vice-chairs, and a number of part-time members. The length of the initial appointments and any reappointments of Commission members, including the chair, are set out in the *Administrative Tribunals Appointment and Administration Act*, as are other matters relating to the appointees. This Act also sets out the responsibilities of the chair.

During the present report period, the membership of the Commission changed. Three members' appointments expired and three new members were appointed. During the year, the Commission consisted of the following members:

MEMBER	PROFESSION	FROM
Chair		
Alan Andison	Lawyer	Victoria
Vice-Chair		
Gabriella Lang (from 2010-11-01)	Lawyer	Campbell River
David Ormerod (until 2010-10-31)	Professional Forester	Victoria
Members		
R. O'Brian Blackall (from 2010-10-07)	Professional Engineer/Geoscientist	Charlie Lake
Carol Brown	Lawyer/CGA/Mediator	Prince George
Robert Cameron	Professional Engineer	North Vancouver
Monica Danon-Schaffer	Professional Engineer	West Vancouver
Bruce Devitt	Professional Forester (Retired)	Esquimalt
Margaret Eriksson (until 2010-10-31)	Lawyer	Vancouver
J. Tony Fogarassy (from 2010-10-07)	Geoscientist/Lawyer	Vancouver
Les Gyug	Professional Biologist	Westbank
James Hackett	Professional Forester	Nanaimo
R.G. (Bob) Holtby	Professional Agrologist	Westbank
Blair Lockhart	Lawyer/Professional Geoscientist	Vancouver
Ken Long	Professional Agrologist	Prince George
David Searle, C.M., Q.C.	Lawyer (Retired)	North Saanich
Douglas VanDine (from 2010-10-07)	Geological & Geotechnical Engineer	Victoria
Reid White	Professional Biologist/Civil Engineer	Telkwa
Robert Wickett	Lawyer	Vancouver
Loreen Williams	Lawyer/Mediator	West Vancouver
Phillip Wong (until 2010-10-31)	Professional Engineer	Vancouver

Administrative Law

Administrative law is the law that governs public officials and tribunals that make decisions affecting the rights and interests of people. Administrative law applies to the decisions and actions of statutory decision-makers who exercise power derived from legislation. The goal is to ensure that officials make their decisions in accordance with the principles of procedural fairness/natural justice by following proper procedures and acting within their jurisdiction.

The Commission is governed by the principles of administrative law and, as such, must treat all the parties involved in a hearing before the Commission fairly, giving each party a chance to explain its position.

Appeals to the Commission are decided on a case-by-case basis. Unlike a court, the Commission is not bound by its previous decisions; present cases of the Commission do not necessarily have to be decided in the same way that previous ones were.

The Commission Office

The office provides registry services, legal advice, research support, systems support, financial and administrative services, training, and communications support for the Commission.

The Commission shares its staff and its office space with the Environmental Appeal Board, the Oil and Gas Appeal Tribunal, the Community Care and Assisted Living Appeal Board, the Health Professions Review Board, the Hospital Appeal Board, the Industry Training Appeal Board, and the Financial Services Tribunal.

Each of the tribunals operates independently of one another. Supporting eight tribunals through one administrative office gives each tribunal access to resources while, at the same time, cutting down on administration and operation costs. In this way, expertise can be shared and work can be done more efficiently.

Commission Resources

The fiscal 2010/2011 budget for the Forest Appeals Commission was $359,000

The fiscal 2010/2011 budget for the shared office and staff was $1,318,000

Policy on Freedom of Information and Protection of Privacy

The appeal process is public in nature. Hearings are open to the public, and information provided to the Commission by one party must also be provided to all other parties to the appeal.

The Commission is subject to the *Freedom of Information and Protection of Privacy Act* and the regulations under that Act. If information is requested by a member of the public regarding an appeal, that information may be disclosed, unless the information falls under one of the exceptions in the *Freedom of Information and Protection of Privacy Act*.

Parties to appeals should be aware that information supplied to the Commission will be subject to public scrutiny and review.

In addition, the names of the parties in an appeal appear in the Commission's published decisions which are posted on the Commission's website, and may appear in this Annual Report.

The Appeal Process

Appeals under the *Forest Practices Code of British Columbia Act*

There are no longer any decisions or determinations made under the *Code* that are appealable to the Commission. However, as other statutes refer appeals to the Commission, the *Code* is still important because it both establishes the Commission, and sets out the basic powers and procedures to be employed by the Commission on an appeal (unless otherwise specified).

Specifically, the Commission is established under Part 9 of the *Code*. This part contains the provisions setting out the structure, organization and mandate of the Commission, including its mandate to submit this Annual Report.

The general powers of the Commission on an appeal remain in Part 6 of the *Code*, with additional powers and procedures further detailed in Part 3 of the *Administrative Review and Appeal Procedure Regulation*, B.C. Reg. 12/04.

The appeal powers and procedures set out in sections 131 to 141 of the *Code* apply to appeals filed against decisions made under the *Forest and Range Practices Act*, the *Forest Act*, the *Range Act* and the *Wildfire Act*. The *Private Managed Forest Land Act* does not incorporate those *Code* provisions.

Appeals under the *Forest and Range Practices Act*

The *Forest and Range Practices Act* provides for the continuation of the Commission under section 194 of the *Code*. As noted above, it also incorporates the Commission's powers and procedures as set out in the *Code*.

Part 6, Division 4 of the *Forest and Range Practices Act* sets out the decisions that are appealable to the Commission, which include the following:

- approval of a forest stewardship plan, woodlot licence plan or an amendment;
- authorizations regarding range stewardship plans;
- approvals, orders, and determinations regarding range use plans, range stewardship plans or an amendment;
- suspensions and cancellations regarding forest stewardship plans, woodlot licence plans, range use plans or range stewardship plans, and permits;
- orders regarding range developments;
- orders relating to the control of insects, disease, etc.;
- orders regarding unauthorized construction or occupation of a building on Crown land in a Provincial forest;
- orders regarding unauthorized construction of trail or recreation facilities on Crown land;

- determinations regarding administrative penalties;
- remediation orders and stopwork orders;
- orders regarding forest health emergencies;
- orders relating to the general intervention power of the minister;
- orders regarding declarations limiting liability of persons to government;
- relief granted to a person with an obligation under this Act or operational plan;
- conditions imposed in respect of an order, exemption, consent or approval; and,
- exemptions, conditions, and alternative requirements regarding roads and rights of way.

Prior to an appeal, an official who makes a determination may correct certain errors in the determination within 15 days after the determination was made.

In addition to this correction process, there is an internal administrative review process. If a person is subject to certain specified determinations listed in the *Forest and Range Practices Act*, and that person requests a review, a review must be conducted. However, this review is only available if there is evidence that was not available at the time of the original determination. The Forest Practices Board may also require a review of specified determinations listed under the *Forest and Range Practices Act*, if it receives consent from the person who is the subject of the determination. Either the determination, or a decision made after completion of a review of the determination, may be appealed to the Commission by the Forest Practices Board or by a person subject to the determination.

Appeals under the *Forest Act*

Appealable decisions under the *Forest Act* are set out in section 146 of that Act and include certain determinations, orders and decisions made by district or regional managers, timber sales managers, employees of the Ministry of Forests and Range, and the Chief Forester. Appealable decisions include matters such as the determination of stumpage and the suspension of rights under a licence or agreement.

Certain decisions of the Chief Forester, or an employee of the Ministry of Forests and Range, may be appealed to the Commission without prior review (e.g., stumpage determinations). However, determinations, orders or decisions made by a district or regional manager, or a timber sales manager, must be reviewed by a reviewer before they may be appealed. If the person who is subject to the decision, or the person in respect of whose agreement a decision is made, disagrees with the review decision, that person may appeal the review decision to the Commission.

Appeals under the *Range Act*

The decisions made under this Act that may be appealed to the Commission include the following:

- orders deleting land from the Crown range described in a licence or permit;
- orders by the district manager, or the minister, reducing the number of animal unit months or quantity of hay set out in the licence or permit;
- orders requiring the holder of a licence or permit to refrain from using all or part of the Crown range;
- orders exempting, or refusing to exempt, a licence or permit holder from an obligation to use animal unit months;

- orders relating to the suspension of all or some of the rights granted under a licence or permit, and orders refusing to reinstate suspended rights;
- orders relating to the cancellation of a licence or permit where rights were under suspension;
- decisions that forage or Crown range will not remain available to a licence holder; and,
- amendments to a grazing licence or grazing permit reducing the number of animal unit months due to non-compliance with the licence or permit, or non-compliance with a non-use agreement.

Prior to filing an appeal, the person affected by the order, decision or amendment may request a review, provided that there is evidence that was not available at the time of the original order, decision or amendment.

Either the order, decision or amendment, or the decision made after completion of a review of the order, decision or amendment, may be appealed to the Commission.

An appeal may be filed directly to the Commission against a minister's order issued under section 15(2) of the *Range Act*, which relates to a proposal for a licence or permit.

Appeals under the *Private Managed Forest Land Act*

The requirements for appeals under the *Private Managed Forest Land Act* are set out in section 33 of that Act. That section creates a right of appeal to the Commission for persons who are subject to certain orders, decisions or determinations of the Private Managed Forest Land Council, including:

- determinations that a person has contravened the Act or the regulations;
- remediation orders;
- stop work orders;
- notifications to the assessor regarding contraventions; and,
- requests of the Council to rescind or vary orders, decisions or determinations.

Appeals under the *Wildfire Act*

Part 3, Division 3 of the *Wildfire Act* sets out the decisions that may be appealed to the Commission. It provides that the person who is subject to certain orders may appeal either the order, or the decision made after the completion of a review of the order, to the Commission.

The Forest Practices Board may also request a review of those same orders, provided that it receives consent from the person who is the subject of the order. Further, it may appeal the order, or the decision made after the completion of the review of the order, to the Commission.

The orders that may be appealed are as follows:

- orders to abate a fire hazard;
- orders determining that a person caused or contributed to a fire or to the spread of a fire;
- orders requiring a person to pay the government's costs for fire control and the costs related to the loss of Crown resources as a result of the fire, as determined by the minister;
- contravention orders;
- administrative penalties and cost recovery orders;
- remediation orders and administrative penalties resulting from a failure to comply with a remediation order; and,
- stop work orders.

Legislative Amendments Affecting the Commission

In this report period, there were no legislative changes that affected the types of appeals the Commission hears, or that affected the Commission's powers or procedures.

During this report period, the decisions that could be appealed to the Commission were made by staff in the Ministry of Forests and Range, and later, the Ministry of Natural Resource Operations. After the report period concluded, but before this report was published, responsibility for those decisions was transferred to the Ministry of Forests, Lands and Natural Resource Operations. However, those changes will not affect the Commission's mandate, powers or procedures in respect of appeals.

Further, as part of the government reorganization that occurred on October 25, 2010, the Attorney General was given the statutory authority under the *Constitution Act* as the Minister responsible for the activities of the Forest Appeals Commission and its sister tribunals, the Environmental Appeal Board and Oil and Gas Appeal Tribunal.

Evaluation and Recommendations

Under the *Administrative Review and Appeal Procedure Regulation* and section 197 of the *Code*, the Commission is mandated to annually evaluate the review and appeal process and identify any problems that have arisen. The Commission also makes recommendations on amendments to the legislation respecting reviews and appeals.

The Commission is pleased to report that no problems have been identified in either the review or the appeal process during the past year.

Accordingly, the Commission is not making any recommendations in relation to either of these processes at this time.

Statistics

Forest Appeals Commission

The following tables provide information on the appeals filed with the Commission and decisions published by the Commission, during the report period. The Commission publishes all of its decisions on the merits of an appeal, and most of the important preliminary and post-hearing decisions. The Commission also issues unpublished decisions on a variety of preliminary matters that are not included in the statistics below.

A total of 12 appeals were filed with the Commission in 2010. No appeals were filed under the *Forest and Range Practices Act*, one appeal was filed under the *Forest Practices Code of British Columbia Act*, four were filed under the *Forest Act*, six appeals were filed under the *Wildfire Act*, and one appeal was filed under the *Range Act*. The total number of appeals closed without a hearing during the reporting period was 18. Of this number, eight appeals were closed due to jurisdiction/standing; and 10 were withdrawn or abandoned. A total of 65 appeals were completed in 2010.*

The Commission issued 57 decisions in 2010, including 49 consent orders.

Appeals	
Open Appeals at period start	106
Open Appeals at period end	53
Appeals filed	
Appeals filed under the *Code/Forest and Range Practices Act*	1
Appeals filed under the *Forest Act*	4
Appeals filed under the *Private Managed Forest Land Act*	0
Appeals filed under the *Range Act*	1
Appeals filed under the *Wildfire Act*	6
Total appeals filed	12
Appeals Closed	
Withdrawn, abandoned, jurisdiction/standing	19
Final Decision	46
Total appeals closed	65
Hearings held on the merits of appeals	
Oral hearings completed	5
Written hearings completed	6
Total hearings held on the merits of appeals*	11
Published decisions issued	
Final decisions	
Code/Forest and Range Practices Act	5
Forest Act	2
Private Managed Forest Land Act	0
Range Act	0
Wildfire Act	1
Consent orders	
Code/Forest and Range Practices Act	1
Forest Act	38
Private Managed Forest Land Act	0
Range Act	0
Wildfire Act	10
Total published decisions issued	57

*Note: hearings held and decisions issued in 2010 do not necessarily reflect the number of appeals filed in 2010.

Summaries of Decisions

January 1, 2010 ~ December 31, 2010

Appeals are not heard by the entire Commission; rather appeals are heard by a "panel" of the Commission. The Chair of the Commission will decide whether an appeal should be heard and decided by a panel of one, or by a panel of three members of the Commission. The size and composition of the panel generally depends upon the type(s) of expertise needed by the Commission members in order to understand the issues and adjudicate the appeal in a fair and impartial manner.

Under all of the statutes under which the Commission is empowered to hear appeals, the Commission has the power to confirm, vary or rescind the decision under appeal and to send the matter back to the original decision-maker with or without directions. In addition, under the *Private Managed Forest Land Act* the Commission may make any other order it considers appropriate. When an appellant is successful in convincing the panel that the decision under appeal was made in error, or that there is new information that will change the decision, the appeal is said to be "allowed". If the appellant succeeds in obtaining some changes to the decision, but not all that was asked for, the appeal is said to be "allowed in part". When an appellant fails to establish on a balance of probabilities that the decision is incorrect on the facts or in law, and the Commission upholds the original decision, the appeal is said to be "dismissed".

The Commission also has the power to order a party or intervenor to pay the costs of another party or intervenor. An application for costs may be made at any time in the appeal process, but will not normally be decided until the hearing concludes and the final decision is rendered.

It is important to note that the Commission encourages parties to resolve the issues under appeal either on their own or with the assistance of the Commission. For appeals under the *Forest Act*, a special procedure has been put in place in accordance with a memorandum from the former Ministry of Forests and Range now the Ministry of Forests, Lands and Natural Resource Operations. Upon receipt of a Notice of Appeal under the *Forest Act*, the Commission will hold the appeal in abeyance for 30 days to allow the parties the opportunity to enter into discussions to resolve the issues under appeal.

Regardless of the statute, many appeals are resolved without the need for a hearing. Sometimes the parties will reach an agreement amongst themselves and the appellant will simply withdraw the appeal. At other times, the parties will set out the changes to the decision under appeal in a consent order and ask the Commission to approve the order. The consent order then becomes an order of the Commission. The Commission has included descriptions of some consent orders in the summaries.

It is also important to note that the Commission issues many decisions each year, some

that are published and others that are not. Therefore, not all of the decisions made by the Commission between January 1, 2010 and December 31, 2010 have been included in this Annual Report. Rather, the Commission has selected a few of its decisions to be summarized in this report that reflect the variety of subjects and issues that come before the Commission in any given year. As has been noted in the Message from the Chair, the subject matter and the issues can vary significantly in both technical and legal complexity. The summaries have been organized according to the statute under which the appeal was filed.

Finally, these summaries are an interpretation of the decisions by Commission staff and may be subject to a different interpretation. For a full viewing of all published decisions issued during this report period, and summaries of those decisions, please refer to the Commission's web page.

Appeals under the *Forest Practices Code of British Columbia Act* and the *Forest and Range Practices Act*

Too many healthy green trees harvested under a licence that targeted insect-damaged timber

2008-FOR-005(a) Dory Antonsen v. Government of British Columbia

Decision Date: March 24, 2010

Panel: David Ormerod

Dory Antonsen received a forestry licence to harvest timber in November 2004. In his application for the licence, which became a schedule to the licence, Mr. Antonsen proposed to salvage dead or insect-damaged timber in order to improve ungulate winter range. He proposed to harvest up to 1000 m^3 of timber, of which 80% would be dead or down larch and fir, and 20% would be interspersed live trees or larch and fir that was endangered due to insect infestation. He proposed to harvest the timber by single tree selection with retention of live trees, which involved hand falling.

Following a series of inspections by the Ministry of Forests and Range (the "Ministry"), the licence was suspended twice in 2005. In the first instance, the Ministry found unauthorized skid trail use, and in the second instance, the Ministry found that too much green timber was being harvested. A few days after the second suspension, the Ministry found that Mr. Antonsen was operating despite the suspension. The Ministry then issued a stop work order and seized a quantity of decked timber. The seized timber amounted to four truck loads, with a total scaled volume of 165.4 m^3. The Ministry conducted a stump cruise of the harvest area and concluded that 143.48 m^3 of timber was part of an unauthorized harvest. Approximately the same volume of cedar had been delivered to buyers under the licence.

The District Manager, Columbia Forest District, found that Mr. Antonsen contravened section 52(1) of the *Forest and Range Practices Act* (the "Act") by harvesting Crown timber without authorization, and section 84(1) of the *Forest Act* by failing to properly hammer mark four loads of timber. The District Manager levied a penalty of $4,548.32 for the unauthorized timber harvesting, and a penalty of $400 ($100 per load) for the failure to mark the timber.

Mr. Antonsen appealed on the basis that the determination resulted from a flawed investigation and decision-making process, and that faller safety was not properly considered by the District Manager. Mr. Antonsen argued that many of the green trees were harvested to ensure faller safety, as required by worker safety regulations, and some green trees showed evidence of insect infestation. He did not dispute that four loads of timber were transported without hammer marks, but he submitted that the timber marking

contravention should be rescinded because the loads were seized by the Ministry.

The Commission found that the Ministry's investigation and hearing processes were fair, and there was no evidence to support Mr. Antonsen's contention that those processes were incomplete or unfair.

In addition, the Commission found that a substantial amount of the total volume harvested under the licence came from green trees, and from species other than larch and fir. The evidence showed that the stand of timber was dense and contained numerous snags and infested trees, which made it very hazardous in terms of faller safety. Based on the evidence, the Commission concluded that the application for the licence had proposed the harvest of an unrealistic proportion of dead/endangered larch and fir, given the density and species mix of the timber and the number of green trees that would need to be harvested in order to comply with faller safety regulations. The Commission also found that the licence made little provision for falling green timber in order to access the target timber.

The Commission found that, when the licence was issued, neither the Ministry nor Mr. Antonsen had realized that the terms of the licence were unfeasible. The Commission noted that Mr. Antonsen was inexperienced as a licensee and had relied on a professional forester to prepare the licence application for him. However, the Commission found that Mr. Antonsen could have applied for an amendment to the licence once he recognized the difficulty of complying with it, or he could have sought approval from the District Manager to harvest more green timber than was contemplated in the licence, but he did neither. Consequently, the Commission found that Mr. Antonsen contravened section 52(1) of the *Act*.

After considering the factors set out in section 71(5) of the *Act*, the Commission found that the penalty for the unauthorized harvesting should be reduced to $716.43. Specifically, the Commission found that the penalty should not include an amount to remove the economic benefit Mr. Antonsen received as a result of the contravention. The Commission found that the Ministry failed to investigate the unauthorized harvesting in a timely manner, and this contributed to the volume of green timber that was harvested. The Commission calculated the penalty amount based on the amount of stumpage lost on the volume of 143.48 m^3, as a result of green logs being billed at the stumpage rate for dead timber.

Regarding the timber marking contravention, the Commission found that Mr. Antonsen was incorrect in relying on the trucker to place the hammer marks on the timber. The Commission found that the law is clear that Mr. Antonsen was responsible for ensuring that the timber was properly marked before it was removed from Crown land. The Commission also found that the requirement to apply the timber mark did not cease to apply when the Ministry seized the timber. Consequently, the Commission confirmed that Mr. Antonsen contravened section 84(1) of the *Forest Act* with respect to the four loads of timber. However, the Commission found that mitigating factors justified reducing the penalty to zero.

- Accordingly, the appeal was allowed, in part. The Government's application for costs against Mr. Antonsen was denied.

What constitutes "accurate" data in a licensee's submission that is used to determine stumpage rates?

2008-FOR-006(a) Ainsworth Lumber Co. Ltd. v. Government of British Columbia
Decision Date: October 29, 2010
Panel: Margaret Eriksson

Ainsworth Lumber Co. Ltd. ("Ainsworth") appealed a determination and notice of penalty issued in July 2008 by the District Manager, Cascade Forest District, Ministry of Forests and Range under

section 71(2) of the *Forest and Range Practices Act*. In the determination, the District Manager found that Ainsworth had contravened section 105.1 of the *Forest Act* by failing to submit accurate information in the appraisal data submissions it provided to the Ministry for use in determining the stumpage rate applicable to timber harvested under a cutting permit. Specifically, the District Manager found that Ainsworth did not provide accurate information in the second set of detailed engineering cost estimates ("ECEs") it had submitted regarding the construction of one road and reconstruction of portions of another road and associated spurs. The District Manager held that although Ainsworth ultimately submitted a third and "final" ECE that was accurate, Ainsworth knew when it submitted the second "inaccurate" ECE that it would not be carrying out all of the work proposed in that ECE. The Manager found that Ainsworth had knowingly filed the inaccurate second ECE, which was unchanged from Ainsworth's initial ECE, despite the Ministry questioning the accuracy of Ainsworth's initial ECE. The first and second ECEs totalled $811,015 and were based on the estimated cost of the work contemplated while the roads were under construction, whereas the final ECE totalled $613,480 and was based on the actual cost of the work completed. The District Manager levied a penalty of $1,500 for the contravention.

Ainsworth appealed to the Commission on the basis that the second ECE was "accurate" within the meaning of section 105.1 of the *Forest Act*, because the ECE reflected the costs that Ainsworth expected to incur, at the time when the roads were still under construction and the actual costs had not yet been determined. Alternatively, Ainsworth submitted that even if the ECE was inaccurate and there was a contravention of section 105.1, no penalty should have been levied.

The Commission considered the meaning of the word "accurate" in section 105.1 of the *Forest Act*, in the context of the legislative scheme including section 105(1) of the *Forest Act* and the relevant sections of the Interior Appraisal Manual ("IAM"). The Commission found that the IAM requires licensees to provide ECEs in their appraisal data submissions as a forward-looking exercise, and these estimates reflect those of a notional average operator. In this context, "accurate" means "conforming... with a given standard", as defined in the Canadian Oxford Dictionary. The Commission noted that section 2.2 of the IAM establishes a process whereby the licensee will be notified if a district manager is of the view that there is an omission or error in the licensee's data submissions, and the licensee may then revise its submissions.

Turning to the facts in this case, the Commission found that when the Ministry expressed concerns about Ainsworth's initial ECE, the Ministry did not specifically ask Ainsworth to submit its actual costs to date, nor did the Ministry refer to any section of the IAM that requires a licensee to update its ECEs based on actual costs incurred at the date of the information request. In the absence of a specific reference to which part of the formulae in the IAM Ainsworth had failed to meet, or a specific request from the Ministry for actual detailed engineering costs to date, the Commission was unable to conclude that the information submitted in Ainsworth's second ECE was inaccurate. The Commission held that the second ECE reflected Ainsworth's estimates of the engineering costs that a notional average operator would incur at the site. Only after the construction was complete and site conditions were known were the actual costs known and Ainsworth was able to submit its final ECE, which reflected its actual costs. The Commission concluded that the estimates in the second ECE were accurate at the time they were submitted, and therefore, Ainsworth did not contravene section 105.1 of the *Forest Act*.

- Accordingly, the determination and penalty were rescinded, and the appeal was allowed.

Unauthorized timber harvesting damages a fish-bearing stream

2009-FOR-003(a) Rick Bullen v. Government of British Columbia

Decision Date: August 11, 2010

Panel: Alan Andison

Rick Bullen appealed a determination issued by the District Manager, South Island Forest District, Ministry of Forests and Range. The District Manager determined that Mr. Bullen contravened sections 52(1) and 52(3) of the *Forest and Range Practices Act* (the "*FRPA*") by cutting and removing Crown timber without authority. The District Manager levied administrative penalties of $1250 per contravention, for a total penalty of $2,500. A review decision issued by a Ministry official confirmed the District Manager's determination and the penalties.

The Ministry's investigation into the matter began after it received an anonymous tip alleging that Mr. Bullen had cut Crown timber adjacent to a power line behind Fanny Bay, BC, and had used his skidder to transport the log to a private property owned by an acquaintance of Mr. Bullen. Ministry officials had attended at the site and found a bucked windfall tree on Crown land, signs of machine entry into the forest, and drag marks leading down a Forest Service road to a trail, across a fish-bearing stream, and further down the trail to a bucked Douglas Fir log matching the bucked windfall. Investigators also found that a cedar log embedded in the stream bank had been cut, and there were drag marks leading down a trail to the property owned by Mr. Bullen's acquaintance. A cedar log matching the log embedded in the stream was found lying adjacent to the acquaintance's property, and Mr. Bullen's skidder was parked on or adjacent to the property. Ministry investigators interviewed several neighbours, who asked to remain anonymous, that claimed to have heard a chainsaw and skidder operating, and seen Mr. Bullen's truck and skidder parked on the acquaintance's property, on the day of the contraventions. The Ministry also interviewed Mr. Bullen, but he ended the interview shortly after being asking about the vehicle he was driving on the day of the contraventions.

Mr. Bullen appealed to the Commission on the basis that he did not commit the contraventions. He requested that the Commission overturn the decision. At the appeal hearing, Mr. Bullen submitted that the allegations made by the anonymous informants were false. He also provided letters from several people stating that they had asked Mr. Bullen to cut trees on their private property prior to the date of the contraventions, and that he was out of town the day after the contraventions occurred.

The Commission reviewed the evidence provided by the parties regarding the circumstances of the contraventions, and whether there was sufficient evidence to establish that Mr. Bullen committed the contraventions. The Commission found, on a balance of probabilities, that Mr. Bullen was responsible for the contraventions. In particular, the Commission held that it was very unlikely that someone other than Mr. Bullen cut the logs and used his skidder, or another skidder, to move the logs. The Commission found that, on or about the day after the contraventions occurred, Ministry investigators observed distinct and recent drag marks leading from the unauthorized harvesting sites to the site where Mr. Bullen's skidder was parked. No others skidders were observed in the area during that time, and Mr. Bullen testified that he removes the battery from his skidder when he is not using it. Mr. Bullen testified that he is an experienced logger, and he owns the skidder that was observed parked near his acquaintance's property. Further, the sawdust and cuts observed by the investigators were very recent, and the logs found near the property of Mr. Bullen's acquaintance matched the timber that

was cut without authority. In addition, Mr. Bullen was vague as to his whereabouts on or shortly before the date of the contraventions, despite clearly recalling other events that occurred around that time. Further, he provided no useful evidence, in the form of documents or corroboration from other persons, regarding his whereabouts or activities on the date of the contraventions. The Commission put little weight on the allegations made by anonymous informants, as it was impossible to assess the credibility or reliability of their evidence. However, the Commission concluded that the other evidence was sufficient to establish that it was more likely than not that Mr. Bullen committed the contraventions.

Next, the Commission reviewed each of the factors set out under section 71(5) of the *FRPA*, and concluded that the penalties were appropriate in the circumstances. In particular, the Commission found that the evidence established that removing the cedar log from the stream bank and dragging logs through the stream channel had caused serious damage to fish habitat in the stream.

- Consequently, the Commission held that the determination and the penalties should be confirmed. The appeal was dismissed.

Parties negotiate settlement over trespass onto Crown Land

2009-FOR-004(a) & 2009-FOR-005(a) 5C Cattle Company Ltd. v. Government of British Columbia
Decision Date: August 15, 2010
Panel: Carol Brown

5C Cattle Company Ltd. (the "Appellant") appealed a determination and a remediation order issued in August 2009 by the Operations Manager (the "Manager"), Quesnel Forest District, Ministry of Forests and Range. In the determination, the Manager found that the Appellant contravened section 74(2) of the *Forest Practices Code of British Columbia Act* (the "*Code*"), sections 52(1) and 53(2) of the *Forest and Range Practices Act* (the "*FRPA*"), and section 84(1) of the *Forest Act*. The Manager levied administrative penalties totalling $14,157.74 for the contraventions. The Manager also issued the remediation order, which required the Appellant to remove an unauthorized fence, gates and signs from Crown land.

The contraventions arose from the following circumstances. The Appellant held a grazing licence on Crown land. In or about 2003, the Appellant reconstructed a fence on Crown land adjacent to the Appellant's land. The Appellant believed that the fence was on its property, as a previous fence was built in the same place in 1995 and it aligned with a fence on a neighbouring property. The area between the fence and the Appellant's property, approximately 4.5 hectares, was actually Crown land, and it was unlawfully harvested in 2006 on behalf of the Appellant. The Appellant did not do a legal survey before erecting the fence, or before commencing timber harvesting. The Appellant did not have a valid timber mark for the timber, and no stumpage was paid.

The Appellant appealed the determination and the remediation order, on the basis that the contraventions were not deliberate, and that the penalties were unreasonable.

The Commission decided to hear the appeals together, but the hearing was adjourned shortly after it began. The parties indicated that they may be able to resolve the appeals. Subsequently, the parties agreed to conclude the appeals by way of a consent order.

By consent of the parties, the Commission ordered that the contraventions were confirmed and the penalties were reduced to a total of $8,600. The appeal of the remediation order was abandoned.

- Accordingly, by consent, of the parties, the appeal of the determination was allowed, in part.

Noncompliance with reporting requirements leads to penalties

2009-FOR-006(a) & 2009-FOR-007(a) Meadow Creek Cedar Ltd. v. Government of British Columbia

Decision Date: April 7, 2010

Panel: Alan Andison

Meadow Creek Cedar Ltd. ("Meadow Creek") appealed a determination and a remediation order issued by the District Manager, Kootenay Lake Forest District, Ministry of Forests and Range. The District Manager determined that Meadow Creek had contravened section 46 of the *Timber Harvesting and Silviculture Practices Regulation* (the "*Regulation*") 21 times by failing to report forest cover inventory for 21 separate openings. The District Manager levied administrative penalties of $100 per contravention, for a total penalty of $2,100. The remediation order required Meadow Creek to submit the required reporting by May 15, 2009.

Meadow Creek did not dispute that it was responsible for the contraventions, nor did it claim any statutory defences. Meadow Creek appealed on the basis that the penalties would be detrimental to the company's survival, and that the reporting had since been completed and steps had been taken to keep the reporting up-to-date. Meadow Creek requested that the Commission reduce the penalties.

The Commission found that the remediation order should be confirmed because the evidence established that the order was warranted when it was issued. In particular, Meadow Creek had received several warnings that it was out of compliance with its reporting requirements, and it remained out of compliance when the remediation order was issued. The Commission found that the fact that the reporting had since been completed was irrelevant to whether the remediation order should have been issued.

In addition, the Commission found that the penalties were appropriate in the circumstances. The Commission found that economic hardship is not one of the factors which must be considered when levying a penalty. Further, the Commission held that the evidence established that the contraventions were repeated, continuous and deliberate, and that a penalty was needed to provide both specific deterrence against Meadow Creek and general deterrence to discourage others who may consider failing to report. The Commission found that the penalty of $100 per contravention was nominal, and was appropriate given that Meadow Creek had no previous contraventions of this nature, Meadow Creek derived no economic benefit from the contraventions, and the contraventions caused no damage to public forest resources. The Commission held that it was irrelevant that Meadow Creek had since completed the reporting, and the Commission noted that there was evidence that Meadow Creek continued to be non-compliant with certain reporting requirements while the appeals were being heard. Consequently, the Commission confirmed the penalties.

▶ Accordingly, the appeals were dismissed.

Appeals under the *Forest Act*

All of the appeals decided under this Act in 2010 related to stumpage rates. A stumpage rate is the amount of money that a person (the licensee) must pay to the Government for harvesting Crown timber. The Ministry of Forests and Range (now the Ministry of Forest, Lands and Natural Resource Operations) determines the rate that a licensee must pay, and advises the licensee of the rate in a stumpage advisory notice or a stumpage adjustment notice.

Section 105 of the *Forest Act* states that these rates must be determined, redetermined or

varied in accordance with the policies and procedures approved by the Minister of Forests and Range. Those policies and procedures are contained in two manuals, one for the interior forest region, and one for the coastal forest region. For the interior, stumpage rates must be calculated in accordance with the Interior Appraisal Manual ("IAM"). For the coast, stumpage rates must be calculated in accordance with the Coast Appraisal Manual ("CAM"). The content of these manuals have the force of law under section 105 of the *Forest Act* and the Commission is required to apply them under section 149(3) of the *Forest Act*.

Parties settle appeals following BC Court of Appeal decision upholding Commission's decision on a similar appeal

2005-FA-007(a) & 2005-FA-008(a) Western Forest Products Inc. v. Government of British Columbia
Decision Date: November 2, 2010
Panel: Alan Andison

Western Forest Products Inc. ("Western") appealed two stumpage determinations issued by the Regional Appraisal Coordinator (the "Coordinator"), Forest Region, Ministry of Forests and Range, for two cutting permits on Vancouver Island. Western appealed on the basis that the Coordinator erred by using a log dump at Jordan River rather than the Otter Point log dump as the appraisal log dump and point of origin, and by using the haul distance to Jordan River, in the stumpage determinations.

At the parties' request, the appeals were held in abeyance for several years, pending the outcome of court proceedings involving some of the Commission's decisions in other appeals involving the same or similar issues. In one of those decisions, the Commission had concluded that the Jordan River log dump was not suitable for use by a notional average operator, and it would be unfair to appraise the stumpage rate applicable to Western's cutting authorities based on Jordan River as the point of origin, when all other licensees in the area were appraised to another log dump (see *Western Forest Products Ltd. v. Government of British Columbia*, Decision No. 2004-FA-003(c), issued September 21, 2005). That decision was appealed to the BC Supreme Court and then to the BC Court of Appeal.

In August 2009, the BC Court Appeal released its decision in *Western Forest Products Inc. v. HMTQ*, 2009 BCCA 354, which upheld the Commission's decision. The Province then sought leave from the Supreme Court of Canada to appeal that judgement. On March 11, 2010, the Province's application for leave was dismissed.

Following the conclusion of those court proceedings, the parties agreed to settle the appeals. By consent of the parties, the Commission ordered that the stumpage determinations be rescinded and remitted back to the Coordinator for redetermination utilizing Otter Point as the appraisal log dump, with appropriate haul distances and points of origin.

▶ Accordingly, the appeals were allowed.

Increased harvest of beetle-killed pine affect stumpage rate calculations in the BC Interior

2009-FA-013(a) Stones Bay Holdings Ltd. v. Government of British Columbia
Decision Date: March 1, 2010
Panel: James Hackett

Stones Bay Holdings Ltd. ("Stones Bay") appealed an adjusted stumpage rate that was determined by the Timber Pricing Coordinator (the "Coordinator"), Northern Interior Forest Region, Ministry of Forests and Range. The adjusted stumpage rate applied to sawlogs harvested under Stones Bay's timber sale licence ("TSL") A77792, and scaled between December 15, 2005 and April 30, 2007.

When logs are scaled, they are classified by grade based on their size and quality for the purposes of manufacturing. On April 1 2006, the Ministry changed the log grading rules for the BC Interior due to the increasing harvest of lodgepole pine timber killed by the mountain pine beetle, and the fact that, although this timber was dead and dry, it could still be manufactured into useful forest products. The rule changes affected the calculation of stumpage rates.

The adjusted stumpage rate was determined according to a calculation that used the green sawlog fraction "GLF.

At issue in this appeal was the information used by the Manager to calculate the GLF. A higher GLF results from using a higher percentage of green sawlogs (and correspondingly, a lower percentage of dead and dry trees). A higher GLF leads to a higher adjusted stumpage rate.

Stones Bay submitted that the Manager should have considered the level of beetle infestation on the cutting authority area to estimate the volume of dead and dry timber for the purpose of calculating the GLF. Stones Bay also submitted that the Manager should have considered information from another TSL located near to TSL A77792, before calculating the GLF for TSL A77792. Alternatively, Stones Bay argued that the Commission should order the Ministry to use the forest district average as the GLF for TSL A77792.

Regarding the issue of whether the Manager should have considered the extent of the beetle infestation on TSL A77792 before he calculated the GLF, the Commission found that beetle attack levels were a poor predictor of the volume of dead and dry timber on a TSL. In that regard, the Commission accepted the Manager's statistical evidence, which showed a weak correlation between the level of beetle attack and the volume of dead and dry timber.

The Commission also concluded that the Manager acted reasonably in calculating the GLF for TSL A77792 based on data from two TSLs which were located close to TSL A77792 and exhibited similar stand characteristics to TSL A77792. The Commission concluded that there was no basis to also use scale data from another TSL selected by Stones Bay or the district average GLF.

▶ Accordingly, the appeal was dismissed.

Bridge upgrade and road development costs appealed

2009-FA-014(a) Atco Wood Products Ltd. v. Government of British Columbia
Decision Date: September 16, 2010
Panel: David Ormerod

Atco Wood Products Ltd. ("Atco") appealed a stumpage rate determination issued in September 2009 by the Timber Pricing Coordinator (the "Coordinator"), Southern Interior Forest Region, Ministry of Forests and Range. In determining the stumpage rate, the Coordinator rejected six engineered cost estimates ("ECEs") in Atco's appraisal data submissions for cutting permit ("CP") 28 of forest licence A20218. Three of the ECEs were for upgrading existing bridges on a forest service road. The other three ECEs were for terrain stability field assessments associated with Atco's development of a logging road, extending from the existing forest service road, pursuant to a road permit issued under the forest licence. Atco used both roads when harvesting timber under its forest licence.

All of the ECEs were for work completed before June 2006. The ECEs were not included in any of Atco's appraisal data submissions until July 2009, when it applied for CP 28. Atco did not include the ECEs in its appraisal data submissions for earlier cutting authorities because applying the ECEs towards the stumpage rates for those cutting authorities would have resulted in negative stumpage rates, and

therefore, the statutory minimum stumpage rate would have applied and Atco would have received limited compensation for the ECEs. Based on conversations with Ministry staff, Atco staff believed that the ECEs could be 'held back' and applied to a future cutting permit, such as CP 28, that would have a positive stumpage rate.

The Coordinator rejected the ECEs on the basis that CP 28 was not the first tributary cutting authority for the forest licence, and there was no extended road amortization agreement ("Agreement") between Atco and the Ministry in respect of CP 28 or any other cutting authorities issued under the forest licence.

On appeal to the Commission, Atco acknowledged that it had no Agreement with the Ministry regarding the ECEs, but argued that the Interior Appraisal Manual (the "IAM") did not require it to have an Agreement in order to claim ECEs that pertain to a forest service road. Alternatively, Atco submitted that if the IAM did require an Agreement, then the Ministry should redetermine the stumpage rate under section 2.5 of the IAM to prevent Atco from suffering an inequity.

The Government submitted that the IAM required an Agreement because CP 28 was not the first tributary cutting authority in this case, and section 2.5 could not be used to retroactively create an Agreement.

First, the Commission considered whether the 'first tributary' rules for road development cost amortization apply to the ECEs relating to the upgrade of bridges on the forest service road. The Commission found that the three ECEs pertaining to bridge upgrades on the forest service road were neither "new" development nor "development occurring under the authority of a road permit or cutting permit", and therefore, those ECEs were not covered by the requirements in the IAM to allocate certain road development costs to the first fully appraised tributary cutting authority. The Commission also held that nothing in the IAM expressly prohibits the type of costs in the three bridge-related ECEs from being included in the appraisal and noted that those ECEs had not been included in any previous appraisal.

For all of those reasons, the Commission concluded that the three ECEs pertaining to the upgrade of bridges on the forest service road should have been included in the appraisal of CP 28.

Next, the Commission considered whether the IAM could be applied to allow the inclusion of the other three ECEs, which pertained to development of the logging road under a road permit, in the appraisal of CP 28. The Commission held that section 2.5 of the IAM contemplates circumstances where the licensee and the Coordinator "agree" that a stumpage rate should be redetermined, and in this case the parties did not agree. Consequently, the Commission concluded that section 2.5 did not apply in this case.

In summary, the Commission concluded that the ECEs associated with upgrades of the bridges on the forest service road should have been allowed in the appraisal of CP 28, but the Coordinator correctly rejected the ECEs for development of the logging road under Atco's road permit. The Commission referred the matter back to the Coordinator with directions to redetermine the stumpage rate for CP 28 to account for the ECEs associated with the forest service road.

▶ Accordingly, the appeal was allowed, in part.

Application for a six-year extension of time to file an appeal denied

2010-FA-002(a) & 2010-FA-003(a) Western Forest Products Inc. v. Government of British Columbia
Decision Date: October 12, 2010
Panel: Alan Andison

Western Forest Products Inc. ("Western") appealed two separate stumpage rate determinations

issued in 2004 by the Regional Appraisal Coordinator (the "Coordinator"), South Island Forest District, Ministry of Forests and Range. The determinations were reappraisals that applied to sawlogs scaled between February 29 and March 31, 2004, pursuant to two cutting permits ("CPs") held by Western on Vancouver Island.

In August 2010, Western appealed the determinations on the grounds that the Coordinator erred by using the Jordan River log dump rather than the Otter Point log dump as the appraisal log dump and point of origin, and by using the haul distance to Jordan River, in the reappraisals. Western submitted that its objection to using Jordan River was confirmed in a BC Court Appeal decision released in August 2009 (*Western Forest Products Inc. v. HMTQ*, 2009 BCCA 354) ("*Western*"). Western applied to the Commission for an extension of time to file the appeals, because the appeals were filed after the expiry of the three-week statutory appeal period.

Before the Commission accepted the appeals, it requested submissions from the parties on whether the applications for a six-year extension of time should be granted.

Western submitted that the applications should be granted. It submitted that that the Commission had previously granted extensions and accepted other appeals filed by Western pertaining to similar determinations issued in 2004. Western argued that the present appeals were "inadvertently omitted" from the group of appeals it filed in 2005 and 2006 involving similar determinations. In addition, Western explained that it had expected the Ministry to correct and reissue the present determinations after the Court issued its decision in *Western*, and Western was not notified by the Ministry until July 2010 that the determinations would not be reissued. Further, Western submitted that granting the extensions would not prejudice the Government.

The Government submitted that Western's excuses were insufficient to warrant extensions of time, and that granting extensions in these circumstances would cause prejudice to the Government.

The Commission found that Western's delay in filing these appeals was likely due to error or inadvertence, as it had filed a number of appeals of similar determinations in 2005 and 2006. The Commission held that, although the present appeals could still be heard together with the appeals filed in 2005 and 2006, which had been held in abeyance at the parties' request, other factors weighed in favour of denying the extensions of time. Specifically, the Commission found that the Government would be prejudiced due to the uncertainty created by accepting the appeals after such a lengthy delay. The Commission also held that accepting the appeals when the lengthy delay was caused simply by inadvertence or error would defeat the purpose of the limitation period.

- Accordingly, the applications for an extension of time were denied, and the appeals were rejected as out of time.

Appeals under the *Private Managed Forest Land Act*

During the report period, there were no decisions issued on appeals from determinations made under the *Private Managed Forest Land Act*.

Appeals under the *Range Act*

During the report period, there were no decisions issued on appeals from determinations made under the *Range Act*.

Appeals under the *Wildfire Act*

Question of liability for a forest fire caused by a "snag" tree falling on a power line

2009-WFA-002(a) Telus Mobility Inc. v. Government of British Columbia
Decision Date: October 4, 2010
Panel: David H. Searle, CM, QC; Les Gyug; Blair Lockhart

Telus Mobility Inc. ("Telus") appealed a contravention order issued by the Fire Centre Manager, Kamloops Fire Centre, Ministry of Forests and Range (the "Ministry"). The events that led to the appeal arose from a forest fire that occurred in July 2006.

Telus has a licence to maintain a power line along the Chuwhels Mountain Forest Service Road. The power line supplies electricity to a mobile telephone mast operated by Telus. In the early afternoon of July 3, 2006, a dead tree or "snag" blew down on the power line, causing the power to go out. A contractor of Telus responsible for maintaining the power line was alerted to the power failure and went to the site. He found a snag on the power line at approximately kilometre 4.1, and removed it. He replaced a fuse, and power was restored. There is no suggestion that this snag caused a fire. Later that afternoon, he was again notified of a power failure. However, as he drove to the site this time, he was stopped by Ministry officials because of the fire, which occurred at approximately kilometre 4.4 on the power line. The fire was caused by a snag (not the one that was removed) falling on the power line. The power line fell to the ground and ignited the fire, which grew to over 380 hectares in size.

The Fire Centre Manager determined that Telus had failed to maintain its utility line equipment as required under section 10(a) of the *Wildfire Regulation* (the "*Regulation*"). He also ordered Telus to pay the Government's costs of fire control and for damaged or destroyed Crown timber resulting from the fire. Those costs totalled over $2 million.

At the parties' request, the Commission heard only the issue of liability. Any issues regarding the quantum of costs would be decided later in a separate hearing, if necessary.

Telus requested that the Commission set aside the contravention order on the basis that Telus did not contravene section 10(a) of the *Regulation*, or alternatively, that Telus exercised due diligence. There was no dispute that the power line's design and construction was in accordance with applicable standards. Nor was there any dispute that the fire was caused when a snag fell on the power line, causing two insulators to break, so that the line fell to the ground. Telus argued that section 10(a) of the *Regulation* does not impose a duty with respect to vegetation maintenance; rather, it imposes a maintenance obligation with respect to "equipment, apparatus and material" only.

The Commission first considered whether Telus' failure to remove the snag before it fell on the power line amounted to a contravention of section 10(a) of the *Regulation*. The Commission held that section 10(a) of the *Regulation* deals with the risk of ignition on, or adjacent to, the site. The wording of section 10(a) specifically refers to "the site" and not just the equipment. The Commission found that, for ignition to occur, both the equipment and the site combine to produce the appropriate conditions. The evidence established that trees or snags falling on overhead power lines are a known source of potential line failure and fire, and that fire prevention measures in utility transmission operations typically include a vegetation management program involving regular right-of-way inspections, brush removal, and

identification and removal of snags that may fall onto power lines. The obligations on a transmission utility operator under section 10(a) of the *Regulation* include both preventive and reactive maintenance. There was no evidence that Telus had a program of preventive vegetation management for the power line. For those reasons, the Commission concluded that Telus contravened section 10(a) of the *Regulation*.

Next, the Commission considered whether Telus exercised due diligence in discharging its obligations under section 10(a) of the *Regulation*. The Ministry's evidence was that the snag that caused the fire had been dead for a number of years, and was both visibly dead and a predictable hazard. The Commission found that this evidence showed a lack of preventive maintenance by Telus to maintain equipment in a manner that reduces the likelihood of producing an ignition source. The Commission held, therefore, that Telus had failed to establish due diligence as a defence to the contravention.

Consequently, the Commission confirmed the Fire Centre Manager's finding that Telus contravened section 10(a) of the *Regulation* and that it failed to establish due diligence as a defence to the contravention.

▶ The appeal was dismissed on the issue of liability.

Order and penalty for causing forest fire rescinded because it was issued out of time

2009-WFA-003(a) Solana Consultant & Investment Corp. v. Province of British Columbia (Forest Practices Board, Third Party)
Decision Date: January 13, 2010
Panel: Alan Andison

Solana Consultant & Investment Corp. ("Solana") appealed an order issued by the Fire Centre Manager, Southeast Fire Centre, Ministry of Forests and Range, that Solana had contravened section 6(3)(b) of the *Wildfire Regulation* by carrying out a high risk activity when there was a risk of a forest fire starting or spreading, without having an adequate fire suppression system at the activity site.

The fire occurred on August 16, 2007, and started in a cut block where Solana was doing mechanical site preparation with an excavator. The conditions at the site were dry and hot. The tracks and/or scarification head of the excavator struck rocks, causing hot metal fragments to ignite fine dry fuels. The fire suppression system on site consisted of one five-gallon hand pump tank with water, three ten-pound chemical fire extinguishers, one five-pound chemical fire extinguisher, and two shovels. The machine operator noticed the fire, and attempted to report it to four different offices of the Ministry, without success. He attempted to build a fire guard to control the fire, until Ministry air tankers arrived. The fire eventually burned approximately 190.2 hectares of immature forest. The Ministry estimated that the net loss of Crown stumpage revenues due to the damage caused by the fire was $93,060.96, after recovery through salvage logging. The Province did not seek to recover its fire suppression costs from Solana.

The Fire Centre Manager found that Solana was liable for the contravention and had not established the defence of due diligence. He ordered Solana to pay an administrative penalty of $5,000.

Solana appealed the order on the grounds that it had followed industry standards, and had adequate fire suppression equipment on site at the time of the fire. Solana also argued that the Ministry's slow response time to the fire contributed to the fire spreading rapidly.

Before the appeals were heard, the parties reached an agreement to settle the appeal. Specifically, the Province acknowledged that the facts which led to the order against Solana came to the attention of a Ministry official on August 16, 2007, but the Fire

Centre Manager's order was not issued until August 19, 2009, which is in excess of the two-year limitation period set out in section 33 of the *Wildfire Act* to issue an order for a contravention of the Act. Consequently, by consent of the parties, the Commission rescinded the order against Solana.

▶ Accordingly, the appeal was allowed.

Application for pre-hearing production of documents granted in part

2009-WFA-004(a) Louisiana-Pacific Canada Ltd. v. Government of British Columbia
Decision Date: February 16, 2010
Panel: Alan Andison

Louisiana-Pacific Canada Ltd. ("Louisiana-Pacific") appealed a contravention order and administrative penalty/cost recovery order issued by the Fire Centre Manager, Southeast Fire Centre, Ministry of Forests and Range. The events pertaining to the appeal involved alleged contraventions of the *Wildfire Act* that occurred in 2007.

As a preliminary matter, Louisiana-Pacific applied to the Commission for an order that the Government produce four documents that Louisiana-Pacific had previously requested from the Government. The Government had declined to produce the documents on the grounds that they were irrelevant to the appeal. The four documents were:

- correspondence in 2009 from the Fire Centre Manager relating to burn piles;
- policies and procedures used by the Southeast Fire Centre in 2007;
- radio logs from a fire incident in October 2006; and
- documents dated October 26, 2006, regarding a fire escape.

In deciding whether to grant the application, the Commission applied the following test: whether there is a reasonable possibility that the information sought would be useful to the applicant during the applicant's preparation and presentation of their case before the Commission.

The Commission found that only one of the four documents met this requirement; namely, the policies and procedures used by the Southeast Fire Centre in 2007. The Commission held that those documents may have been used by staff at the Southeast Fire Centre, during the time of the events that led to the appeal. The Commission ordered the Government to disclose this document to Louisiana-Pacific several weeks before the appeal hearing. The Commission denied Louisiana-Pacific's application with respect to the other three documents.

▶ Accordingly, the application was granted, in part.

Appeals arising from fire caused by campers rejected due to late filing

2010-WFA-001(a) to 2010-WFA-006(a) Joe Kraljic et al. v. Government of British Columbia
Decision Date: June 16, 2010
Panel: Alan Andison

Joe Kraljic and five other campers (the "Appellants") appealed six review decisions issued by the District Manager, Rocky Mountain Forest District, Ministry of Forests and Range. The District Manager confirmed six determinations that the Appellants had contravened sections 3(1) and 5(1) of the *Wildfire Act* by failing to properly extinguish a camp fire. The District Manager also confirmed penalties of $1,000 against each of the Appellants.

The Appellants were on a multi-family camping trip near Gold Bay in July 2008 when the fire started. The District Manager found that the campers failed to properly extinguish a fire in their group fire pit, and that hot ash from the fire pit caused a wildfire on July 21, 2008. The Ministry dispatched attack crews and aircraft to extinguish the fire.

The Appellants filed their appeals on April 27, 2010, approximately seven months after the review decision was issued in September 2009, and nine months after the initial determinations were issued. The statutory time limit for filing an appeal is three weeks from the date of the decision being appealed. The Appellants requested that the Commission grant them an extension of time to appeal, pursuant to section 131(4) of the *Forest Practices Code of British Columbia Act*.

Before the appeals were accepted, the Commission requested submissions from the parties on whether to grant the extension of time. The Government objected to granting the extension of time. The Appellants submitted that the delay was a result of them being told by Ministry staff that they would need to hire a lawyer for an appeal, and that all costs associated with the appeal process would be their costs. They submitted that it took them months to navigate government websites and do research which led them to realize that they could represent themselves in an appeal and that they would not have to bear the costs of the appeal process.

The Commission found that the reasons provided by the Appellants for the delay were not sufficiently compelling to grant a lengthy extension of time. The Commission held that its power to extend the time for filing an appeal should not be exercised lightly. The purpose of the time limit is to provide finality to administrative proceedings, and people are expected to be diligent in pursuing an appeal. The Commission found that both the review decision and the original determinations contained clear and accurate instructions on how to initiate an appeal, including the time limit for filing an appeal. The Commission noted that the Appellants had followed the instructions for requesting a review of the determinations. The Commission also noted that it has a website, and its office can be reached by telephone through the Government's general telephone directory. The Commission found the Appellants' claims that it took them months to find out that they could represent themselves in an appeal and would not have to pay for the appeal process were implausible in the circumstances.

- Accordingly, the applications for an extension of time were denied, and the appeals were rejected as being out of time.

Appeals of Commission Decisions to the Courts

January 1, 2010 ~ December 31, 2010

British Columbia Supreme Court

During this report period, there were no judgments released by the Court on appeals of Commission decisions.

British Columbia Court of Appeal

Ronald Edward Hegel and 449970 B.C. Ltd. v. British Columbia (Ministry of Forests and the Forest Appeals Commission)

Decision date: June 10, 2010

Court: BCCA; Justices Newbury, Huddart, and Saunders

Cite: 2010 BCCA 289

Ronald Edward Hegel and 449970 B.C. Ltd. (the "Appellants") sought a review of a decision by a Chambers Judge in the BC Court of Appeal denying leave to appeal a decision of the BC Supreme Court. The BC Supreme Court had dismissed an appeal from a decision of Forest Appeals Commission which found that the Appellants had contravened the *Forest Practices Code of British Columbia Act* (the "*Code*").

The decision at stake was the Commission's decision in *Ronald Edward Hegel and 449970 B.C. Ltd. v. Government of British Columbia*, Decision No. 2005-FOR-009(a), issued on October 12, 2007. The Appellants had appealed a determination by the District Manager, Ministry of Forests and Range, that they contravened sections 96(1) and 97(2) of the *Code* by failing to ascertain the boundaries of their private property and harvesting Crown timber without authority. The District Manager levied administrative penalties totaling $132,897.40. The Appellants appealed to the Commission on the grounds that they had exercised due diligence in attempting to locate the property boundaries, that they were operating under a mistake of fact regarding the boundaries, that their actions resulted from an officially induced error, and that the penalty was excessive. The Commission considered a great deal of evidence regarding the boundaries of the Appellants' private property, including modern and historical survey reports, and confirmed the District Manager's determination except for making a minor adjustment to the penalty amount.

The Appellants appealed the Commission's decision to the BC Supreme Court. The Appellants raised four grounds for appeal. With respect to the first ground of appeal, the trial judge concluded that the Commission made no error of law in reaching its conclusion about the location of the northern boundary of the Appellants' property and in concluding that the alleged area of unlawful harvesting was Crown land. As to the second ground

of appeal, the judge found that the Commission had misstated Mr. Hegel's evidence as to the starting point of his investigation of the property boundary. However, the judge concluded that the Commission's decision would not and should not have been any different. Regarding the third ground of appeal, the judge found that the Commission did not misapprehend the evidence concerning the Appellants' exercise of due diligence in their efforts to determine the location of the boundary. Lastly, the judge found that the Commission did not err in law in its approach to the defence of mistake of fact. Accordingly, the Court dismissed the appeal (*Ronald Edward Hegel and 449970 B.C. Ltd. v. Province of British Columbia (Ministry of Forests and Range)*, 2009 BCSC 863).

The Appellants sought leave to appeal to the BC Court of Appeal. A Chambers Judge for the Court of Appeal held that the legislation enabling appeals of the Commission's decisions to the BC Supreme Court only permits appeals on questions of pure law and jurisdiction. The Chambers Judge considered the grounds for appeal before the BC Supreme Court, and held that they did not raise questions of law; rather, they raised questions of mixed fact and law. The Chambers Judge also held that the right of appeal on questions of law does not include a right of appeal on questions of mixed fact and law. The Chambers Judge concluded that the appeal was not properly before the BC Supreme Court, and the application for leave to appeal was dismissed (*Hegel v. British Columbia (Ministry of Forests and Forest Appeals Commission)*, 2009 BCCA 527).

The Appellants then applied to vary the Chambers Judge's order denying leave to appeal. Sitting as a panel of three judges, the Court of Appeal held that two of the issues raised by the Appellants were questions of law; namely, whether the measurement descriptions of the original survey of the land must be given effect, and the legal characteristics of the defences of due diligence and mistake of fact as set out in section 72 of the *Forest and Range Practices Act*. The Court also held that those questions were important to the community and had sufficient merit to warrant granting leave to appeal.

- Accordingly, the Court allowed the application and granted leave to appeal.

Supreme Court of Canada

Her Majesty the Queen in Right of the Province of British Columbia v. Western Forest Products Limited and the Forest Appeals Commission

Decision date: March 11, 2010

Court: McLachlin, C.J.,. Abella, J., Rothstein, J.

Number: 33378

- The application for leave to appeal from the judgment of the Court of Appeal for British Columbia (Vancouver) Number CA03S166, 2009 BCCA 354, dated August 13, 2009, was dismissed with costs to the respondent Western Forest Products Limited.

APPENDIX I

Legislation and Regulations

Reproduced below are the sections of the *Forest Practices Code of British Columbia Act* and the *Administrative Review and Appeal Procedure Regulation* which establish the Commission and set out the general powers and procedures that apply to most appeals.

Also included are the appeal provisions contained in each of the statutes which provide for an appeal to the Commission from certain decisions of government officials: the *Forest and Range Practices Act*, the *Forest Act*, the *Range Act*, and the *Wildfire Act*. Also included are the *Private Managed Forest Land Act* and the *Private Managed Forest Land Regulation*, which establish the particular powers and procedures of the Commission in relation to appeals under that enactment.

The legislation contained in this report is the legislation in effect at the end of the reporting period (December 31, 2010). Please note that legislation can change at any time. An updated version of the legislation may be obtained from Crown Publications.

Forest Practices Code of British Columbia Act

Part 6

COMPLIANCE AND ENFORCEMENT

Division 4 – Administrative Review and Appeals

Part 6 of the *Forest and Range Practice Act* applies

130.1 Part 6 of the *Forest and Range Practices Act* applies to this Act and the regulations under this Act, unless the context indicates otherwise.

Appeal

131 (1) To initiate an appeal under section 82 or 83 of the *Forest and Range Practices Act*, the person referred to in section 82(1) of that Act, or the board under section 83(1) of that Act, no later than 3 weeks after the latest to occur of

(a) the original decision,

(b) any correction under section 79 of that Act, and

(c) any review under section 80 or 81 of that Act,

must deliver to the commission

(d) a notice of appeal,

(e) a copy of the original decision, and

(f) a copy of any decision respecting a correction or review.

(2) [Repealed 2003-55-94.]

(3) The person or board bringing the appeal must ensure the notice of appeal given under subsection (1) complies with the content requirements of the regulations.

(4) Before or after the time limit in subsection (1) expires, the chair or a member of the commission may extend it.

(5) If the person or the board does not deliver the notice of appeal within the time specified, the person or board loses the right to an appeal.

(6) On receipt of the notice of appeal, the commission must, in accordance with the regulations, give a copy of the notice of appeal to the ministers and

(a) to the board, if the notice was delivered

(i) by the person who is the subject of the determination, or

(ii) for an appeal of a failure to make a determination, by the person who would be the subject of a determination, if made,

(b) to the person who is the subject of the determination, if the notice was delivered by the board, or

(c) for an appeal of a failure to make a determination, to the person who would be the subject of a determination, if made, if the board delivered the notice.

(7) The government, the board, if it so requests, and the person who is the subject of the determination or would be the subject of a determination, if made, are parties to the appeal.

(8) At any stage of an appeal the commission or a member of it may direct that a person who may be affected by the appeal be added as a party to the appeal.

(9) After a notice of appeal is delivered under subsection (1), the parties must disclose the facts and law on which they will rely at the appeal, if required by the regulations and in accordance with the regulations.

(10) The commission, after receiving a notice of appeal, must

(a) promptly give the parties to an appeal a hearing, or

(b) hold a hearing within the prescribed period, if any.

(11) Despite subsection (10), if the commission determines that the notice of appeal does not comply with the content requirements of the regulations, or that there was a failure to disclose facts or law under subsection (9) or (14), the commission need not hold a hearing within the prescribed period referred to in subsection (10), but must hold a hearing within the prescribed period after a notice of appeal that does comply with the content requirements of the regulations is delivered to the commission, or the facts and law are disclosed as required under subsection (9) or (14).

(12) A party may

(a) be represented by counsel,

(b) present evidence, including but not limited to evidence that was not presented in the review under section 129,

(c) if there is an oral hearing, ask questions, and

(d) make submissions as to facts, law and jurisdiction.

(13) The commission may invite or permit a person to take part in a hearing as an intervenor.

(14) An intervenor may take part in a hearing to the extent permitted by the commission and must disclose the facts and law on which the intervenor will rely at the appeal, if required

by the regulations and in accordance with the regulations.

(15) A person who gives oral evidence may be questioned by the commission or the parties to the appeal.

Repealed

131.1 [Repealed 2003-55-95]

Order for written submissions

132 (1) The commission or a member of it may order the parties to deliver written submissions.

(2) If the party that initiated the appeal fails to deliver a written submission ordered under subsection (1) within the time specified in the order, the commission may dismiss the appeal.

(3) The commission must ensure that every party to the appeal has the opportunity to review written submissions from the other parties and an opportunity to rebut the written submissions.

Interim orders

133 The commission or a member of it may make an interim order in an appeal.

Open hearings

134 Hearings of the commission must be open to the public.

Witnesses

135 The commission or a member of it has the same power as the Supreme Court has for the trial of civil actions

(a) to summon and enforce the attendance of witnesses,

(b) to compel witnesses to give evidence on oath or in any other manner, and

(c) to compel witnesses to produce records and things.

Contempt

136 The failure or refusal of a person

(a) to attend,

(b) to take an oath,

(c) to answer questions, or

(d) to produce the records or things in his or her custody or possession,

makes the person, on application to the Supreme Court, liable to be committed for contempt as if in breach of an order or judgment of the Supreme Court.

Evidence

137 (1) The commission may admit as evidence in an appeal, whether or not given or proven under oath or admissible as evidence in a court,

(a) any oral testimony, or

(b) any record or other thing

relevant to the subject matter of the appeal and may act on the evidence.

(2) Nothing is admissible in evidence before the commission or a member of it that is inadmissible in a court by reason of a privilege under the law of evidence.

(3) Subsection (1) does not override an Act expressly limiting the extent to or purposes for which evidence may be admitted or used in any proceeding.

(4) The commission may retain, call and hear an expert witness.

Repealed

138 [Repealed 2003-55-95.]

Decision of commission

139 (1) The commission must make a decision promptly after the hearing, and must give copies of the decision to the ministers, the parties and any intervenors.

(2) On the request of any of the ministers or a party, the commission must provide written reasons for the decision.

(3) The commission must make a decision within the prescribed period, if any.

Order for compliance

140 If it appears that a person has failed to comply with an order or decision of the commission or a member of it, the commission or a party may apply to the Supreme Court for an order

(a) directing the person to comply with the order or decision, and

(b) directing the directors and officers of the person to cause the person to comply with the order or decision.

Appeal to court

141 (1) The minister or a party to the appeal, within 3 weeks after being served with the decision of the commission, may appeal the decision of the commission to the Supreme Court on a question of law or jurisdiction.

(2) On an appeal under subsection (1), a judge of the Supreme Court, on terms he or she considers appropriate, may order that the decision or order of the commission be stayed in whole or in part.

(3) An appeal from a decision of the Supreme Court lies to the Court of Appeal with leave of a justice of the Court of Appeal.

Part 9

FOREST APPEALS COMMISSION

Forest Appeals Commission continued

194 (1) The Forest Appeals Commission is continued.

(1.1) The commission is to hear appeals under

(a) Division 4 of Part 6, and

(b) the *Forest Act*, the *Private Managed Forest Land Act* and the *Range Act* and, in relation to appeals under those Acts, the commission has the powers given to it by those Acts.

(2) The commission consists of the following members appointed by the Lieutenant Governor in Council after a merit based process:

(a) a member designated as the chair;

(b) one or more members designated as vice chairs after consultation with the chair;

(c) other members appointed after consultation with the chair.

(3) The *Administrative Tribunals Appointment and Administration Act* applies to the commission.

(4) to (6) [Repealed 2003-47-32.]

Organization of the commission

195 (1) The chair may organize the commission into panels, each comprised of one or more members.

(2) The members of the commission may sit

(a) as a commission, or

(b) as a panel of the commission

and 2 or more panels may sit at the same time.

(3) If members of the commission sit as a panel,

(a) the panel has the jurisdiction of, and may exercise and perform the powers and duties of, the commission, and

(b) an order, decision or action of the panel is an order, decision or action of the commission.

Commission staff

196 (1) Employees necessary to carry out the powers and duties of the commission may be appointed under the *Public Service Act*.

(2) In accordance with the regulations, the commission may engage or retain specialists or consultants that the commission considers necessary to carry out the powers

and duties of the office and may determine their remuneration.

(3) The *Public Service Act* does not apply to the retention, engagement or remuneration of specialists or consultants retained under subsection (2).

No oral hearing as of right

196.1 A person is not entitled to an oral hearing before the commission.

Delegation of powers

196.2 (1) The chair may in writing delegate to a person or class of persons any of the commission's powers or duties under this Act, except the power

(a) of delegation under this section, or

(b) to make a report under this Act.

(2) A delegation under this section is revocable and does not prevent the commission exercising a delegated power.

(3) A delegation may be made subject to terms the chair considers appropriate.

(4) If the chair makes a delegation and then ceases to hold office, the delegation continues in effect as long as the delegate continues in office or until revoked by a succeeding chair.

(5) A person purporting to exercise a power of the commission by virtue of a delegation under this section must, when requested to do so, produce evidence of his or her authority to exercise the power.

Mandate of the commission

197 (1) In accordance with the regulations, the commission must

(a) hear appeals under Division 4 of Part 6 and under the *Forest Act* and the *Range Act*,

(b) provide

(i) the ministers with an annual evaluation of the manner in which reviews and appeals under this Act are functioning and identify problems that may have arisen under their provisions, and

(ii) the minister responsible for the administration of the *Ministry of Forests and Range Act* with an annual evaluation of the manner in which reviews and appeals under the *Forest Act* and the *Range Act* are functioning and identify problems that may have arisen under their provisions, and

(c) annually, and at other times it considers appropriate, make recommendations

(i) to the ministers concerning the need for amendments to this Act and the regulations respecting reviews and appeals,

(ii) to the minister responsible for the administration of the *Ministry of Forests and Range Act* concerning the need for amendments to the *Forest Act* and the *Range Act* and related regulations respecting reviews and appeals under those Acts, and

(d) perform other functions required by the regulations.

(2) The chair must give to the ministers an annual report concerning the commission's activities.

(3) The ministers must promptly lay the report before the Legislative Assembly.

Determinations stayed until proceedings concluded

78 (1) A determination that may be reviewed under section 80 or appealed under section 82 is stayed until the person who is the subject of the determination has no further right to have the determination reviewed or appealed.

(2) Despite subsection (1), the minister may order that a determination, other than a determination to levy an administrative penalty under section 71 or 74(3)(d) is not stayed or is stayed subject to conditions, on being satisfied that a stay or a stay without those conditions, as the case may be, would be contrary to the public interest.

(3) Despite subsection (1), a determination is not stayed if the determination is made under prescribed sections or for prescribed purposes.

Correction of a determination

79 (1) Within 15 days after a determination is made under section 16, 26(2), 27(2), 32(2), 37, 51(7), 54(2), 57(4), 66, 71, 74 or 77 of this Act, the person who made the determination may

(a) correct a typographical, an arithmetical or another similar error in the determination, and

(b) [Repealed 2003-55-37.]

(c) correct an obvious error or omission in the determination.

(2) The correction does not take effect until the date on which the person who is the subject of the determination is notified of it under subsection (4).

(3) The discretion conferred under subsection (1)

(a) is to be exercised in the same manner as the determination affected by it, and

(b) is exercisable with or without a hearing and

(i) on the initiative of the person who made the determination, or

(ii) at the request of the person who is the subject of the determination.

(4) The person who corrected a determination under this section must notify the person who is the subject of the determination.

Review of a determination

80 (1) Subject to subsection (2), at the request of a person who is the subject of a determination under section 16, 20(3), 26(2), 27(2), 32(2), 37, 38(5), 39, 51(7), 54(2), 57(4), 66, 71, 74, 77, 77.1, 97(3), 107, 108, 112(1)(a) or 155(2) of this Act, the person who made the determination, or another person employed in the ministry and designated in writing by the minister must review the determination, but only if satisfied that there is evidence that was not available at the time of the original determination.

(2) On a review required under subsection (1) the person conducting the review may consider only

(a) evidence that was not available at the time of the original determination, and

(b) the record pertaining to the original determination.

(3) To obtain a review of a determination under subsection (1) the person must request the review not later than 3 weeks after the date the notice of determination was given to the person.

(4) The minister may extend the time limit for requiring a review under this section before or after its expiry.

(5) The person conducting the review has the same discretion to make a decision that the original decision maker had at the time of the determination under the review.

Board may require review of a determination

81 (1) If the board first receives the consent of the person who is the subject of a determination under section 16, 37, 71 or 74 of this Act, the board may require a review of the determination by the person who made the determination, or another person employed in the ministry and designated in writing by the minister.

(2) To obtain a review of a determination under subsection (1), the board must require the review not later than 3 weeks after the date the notice of determination was given to the person.

(3) The minister may extend the time limit for requiring a review under this section before or after its expiry.

(4) The person conducting the review has the same discretion to make a decision that the original decision maker had at the time of the determination under the review.

Appeal to the commission by a person who is the subject of a determination

82 (1) The person who is the subject of a determination referred to in section 80, other than a determination made under section 77.1, may appeal to the commission either of the following, but not both:

(a) the determination;

(b) a decision made after completion of a review of the determination.

(2) Sections 131 to 141 of the *Forest Practices Code of British Columbia Act* apply to an appeal under this section.

Appeal to the commission by the board

83 (1) The board may appeal to the commission either of the following, but not both:

(a) a determination referred to in section 81;

(b) a decision made after completion of a review of the determination.

(2) The board may apply to the commission for an order under section 84(2) if

(a) the minister authorized under section 71 or 74 of this Act to make a determination has not done so, and

(b) a prescribed period has elapsed after the facts relevant to the determination first came to the knowledge of the official or the minister.

(3) Sections 131 to 141 of the *Forest Practices Code of British Columbia Act* apply to an appeal under subsection (1) or an application under subsection (2).

Powers of the commission

84 (1) On an appeal

(a) by a person under section 82(1), or

(b) by the board under section 83(1),

the commission may

(c) consider the findings of the person who made the determination or decision, and

(d) either

(i) confirm, vary or rescind the determination or decision, or

(ii) with or without directions, refer the matter back to the person who made the determination or decision, for reconsideration.

(2) On an application under section 83 by the board the commission may order the official or minister referred to in section 83(2) to make a determination as authorized under the applicable provision that is referred to in section 83(2)(a).

(3) The commission may order that a party or intervener pay another party or intervener any or all of the actual costs in respect of the appeal.

(4) After filing in the court registry, an order under subsection (3) has the same effect as an order of the court for the recovery of a debt in the amount stated in the order against the person named in it, and all proceedings may be taken as if it were an order of the court.

Forest Act

Part 12

REVIEWS, APPEALS, REGULATIONS, PENALTIES

Division 2 – Appeals

Determinations that may be appealed

146 (1) Subject to subsection (3), an appeal may be made to the Forest Appeals Commission from a determination, order or decision that was the subject of a review required under Division 1 of this Part.

(2) An appeal may be made to the Forest Appeals Commission from

(a) a determination, order or decision of the chief forester, under section 60.6, 68, 70(2), 77(1)(b) or 112(1),

(b) a determination of an employee of the ministry under section 105(1), and

(c) an order of the minister under section 75.95(2).

(3) No appeal may be made under subsection (1) unless the determination, order or decision has first been reviewed under Division 1 of this Part.

(4) If a determination, order or decision referred to in subsection (1) is varied by the person conducting the review, the appeal to the commission is from the determination, order or decision as varied under section 145.

(5) If this Act gives a right of appeal, this Division applies to the appeal.

(6) For the purpose of subsection (2), a redetermination or variation of stumpage rates under section 105(1) is considered to be a determination.

Notice of appeal

147 (1) If a determination, order or decision referred to in section 146(1) or (2) is made, the person

(a) in respect of whom it is made, or

(b) in respect of whose agreement it is made

may appeal the determination, order or decision by

(c) serving a notice of appeal on the commission

(i) in the case of a determination, order or decision that has been reviewed, not later than 3 weeks after the date the written decision is served on the person under section 145(3), and

(ii) in the case of a determination, order or decision that has not been reviewed, not later than 3 weeks after that date the determination, order or decision is served on the person under the provisions referred to in section 146(2), and

(d) enclosing a copy of the determination, order or decision appealed from.

(2) If the appeal is from a determination, order or decision as varied under section 145, the appellant must include a copy of the review decision with the notice of appeal served under subsection (1).

(3) The appellant must ensure that the notice of appeal served under subsection (1) complies with the content requirements of the regulations.

(3.1) After the notice of appeal is served under subsection (1), the appellant and the government must disclose the facts and law on which the appellant or government will rely at the appeal if required by the regulations and in accordance with the regulations.

(4) Before or after the time limit in subsection (1) expires, the chair or a member of the commission may extend it.

(5) A person who does not serve the notice of appeal within the time required under subsection (1) or (4) loses the right to an appeal.

Appeal

148 (1) The commission, after receiving the notice of appeal, must

(a) promptly hold a hearing, or

(b) hold a hearing within the prescribed period, if any.

(2) Despite subsection (1), if the commission determines that the notice of appeal does not comply with the content requirements of the regulations, or that there was a failure to disclose facts and law required under section 147(3.1), the commission need not hold a hearing within the prescribed period referred to in subsection (1) of this section, but must hold a hearing within the prescribed period after service of a notice of appeal that does comply with the content requirements of the regulations, or the facts and law are disclosed as required under section 147(3.1).

(3) Only the appellant and the government are parties to the appeal.

(4) The parties may

(a) be represented by counsel,

(b) present evidence, including but not limited to evidence that was not presented in the review under Division 1 of this Part,

(c) if there is an oral hearing, ask questions, and

(d) make submissions as to facts, law and jurisdiction.

(5) A person who gives oral evidence may be questioned by the commission or the parties to the appeal.

Order for written submissions

148.1 (1) The commission or a member of it may order the parties to an appeal to deliver written submissions.

(2) If the appellant does not deliver a written submission ordered under subsection (1) within the time specified in the order, the commission may dismiss the appeal.

(3) The commission must ensure that each party to the appeal has the opportunity to review written submissions from the other party and an opportunity to rebut the written submissions.

Interim orders

148.2 The commission or a member of it may make an interim order in an appeal.

Open hearings

148.3 Hearings of the commission are open to the public.

Witnesses

148.4 The commission or a member of it has the same power as the Supreme Court has for the trial of civil actions

(a) to summon and enforce the attendance of witnesses,

(b) to compel witnesses to give evidence on oath or in any other manner, and

(c) to compel witnesses to produce records and things.

Contempt

148.5 The failure or refusal of a person

(a) to attend,

(b) to take an oath,

(c) to answer questions, or

(d) to produce the records or things in his or her custody or possession,

makes the person, on application to the Supreme Court, liable to be committed for contempt as if in breach of an order or judgment of the Supreme Court.

Evidence

148.6 (1) The commission may admit as evidence in an appeal, whether or not given or proven under oath or admissible as evidence in a court,

(a) any oral testimony, or

(b) any record or other thing

relevant to the subject matter of the appeal and may act on the evidence.

(2) Nothing is admissible in evidence before the commission or a member of it that is inadmissible in a court because of a privilege under the law of evidence.

(3) Subsection (1) does not override an Act expressly limiting the extent to or purposes for which evidence may be admitted or used in any proceeding.

(4) The commission may retain, call and hear an expert witness.

Powers of commission

149 (1) On an appeal, whether or not the person who conducted the review confirmed, varied or rescinded the determination, order or decision being appealed, the commission may consider the findings of

(a) the person who made the initial determination, order or decision, and

(b) the person who conducted the review.

(2) On an appeal, the commission may

(a) confirm, vary or rescind the determination, order or decision, or

(b) refer the matter back to the person who made the initial determination, order or decision with or without directions.

(3) If the commission decides an appeal of a determination made under section 105, the commission must, in deciding the appeal, apply the policies and procedures approved by the minister under section 105 that were in effect at the time of the initial determination.

(4) The commission may order that a party pay any or all of the actual costs in respect of the appeal.

(5) After filing in the court registry, an order under subsection (4) has the same effect as an order of the court for the recovery of a debt in the amount stated in the order against the person named in it, and all proceedings may be taken as if it were an order of the court.

(6) Unless the minister orders otherwise, an appeal under this Division does not operate as a stay or suspend the operation of the determination, order or decision under appeal.

Decision of commission

149.1 The commission must make a decision promptly after the hearing and serve copies of the decision on the appellant and the minister.

(2) On request of the appellant or the minister, the commission must provide written reasons for the decision.

(3) The commission must serve a decision within the prescribed period, if any.

Order for compliance

149.2 If it appears that a person has failed to comply with an order or decision of the commission or a member of it, the commission, minister or appellant may apply to the Supreme Court for an order

(a) directing the person to comply with the order or decision, and

(b) directing the directors and officers of the person to cause the person to comply with the order or decision.

Appeal to the courts

150 (1) The appellant or the minister, within 3 weeks after being served with the decision of the commission, may appeal the decision of the commission to the Supreme Court on a question of law or jurisdiction.

(2) On an appeal under subsection (1), a judge of the Supreme Court, on terms he or she considers appropriate, may order that the decision of the commission be stayed in whole or in part.

(3) An appeal from a decision of the Supreme Court lies to the Court of Appeal with leave of a justice of the Court of Appeal.

Part 6 of the *Forest and Range Practices Act* applies

167.3 (1) Divisions 1 to 4 of Part 6 of the *Forest and Range Practices Act* apply to this Act and the regulations under this Act, unless the context indicates otherwise.

(2) Without limiting subsection (1), sections 131 to 141 of the *Forest Practices Code of British Columbia Act* apply to an appeal under the *Forest and Range Practices Act* in respect of a contravention of this Act or the regulations under this Act.

Range Act

Part 3

COMPLIANCE AND ENFORCEMENT

Division 3 – Reviews and Appeals

Reviews

69 (1) Subject to subsection (2), at the request of a person who is the subject of, or whose licence or permit is affected by,

(a) an order of a forest officer under section 60(1),

(b) an order of a district manager under section 36(1) or (2), 49(1), 50(1), 55, 60(1), 62(1)(b) or 63(1),

(c) a decision of the district manager referred to in section 25(5) or 50(4), or

(d) amendments under section 47 or 48,

the person who made the order or decision or who prepared the amendments, or another person employed in the ministry and designated in writing by the minister, must review the order, decision or amendments, but only if satisfied that there is evidence that was not available at the time of the original order, decision or amendments.

(2) On a review referred to in subsection (1), only

(a) evidence that was not available at the time of the original order, decision or amendments, and

(b) the record pertaining to the original order, decision or amendments

may be considered.

(3) To obtain a review referred to in subsection (1), the person who is the subject of, or whose licence or permit is affected by, the order, decision or amendments must request the review not later than 21 days after the date the notice of the order, decision or amendments was delivered to the person.

(4) The minister may extend the time limit in subsection (3) before or after its expiry.

(5) The person conducting a review referred to in subsection (1) has the same discretion to

(a) make an order referred to in subsection (1)(a) or (b),

(b) make a decision referred to in subsection (1)(c), or

(c) prepare amendments referred to in subsection (1)(d)

that the person who made the original order or decision or prepared the original amendments had at the time of the original order, decision or amendments.

(6) After the preparation of amendments under subsection (5)(c) to a licence or permit, and on delivery of the particulars of the amendments to the holder of the licence or permit, the licence or permit, as the case may be, is deemed to be amended to include the amendments.

Appeals to the commission

70 (1) The person who is the subject of, or whose licence or permit is affected by,

(a) an order,

(b) a decision, or

(c) amendments

referred to in section 69(1) may appeal to the commission either of the following, but not both:

(d) the order, decision or amendments;

(e) a decision made after completion of a review of the order, decision or amendments.

(2) An applicant referred to in section 15(2) may appeal to the commission an order of the minister made under that provision.

(3) Sections 131 to 141 of the *Forest Practices Code of British Columbia Act* apply to an appeal under this section.

Powers of the commission

71 (1) On an appeal under section 70, the commission may

(a) consider the findings of the person who made the order or decision or who prepared the amendments, and

(b) either

(i) confirm, vary or rescind the order, decision or amendments, or

(ii) with or without directions, refer the matter back to that person for reconsideration.

(2) If an appeal referred to in subsection (1) results in amendments to a licence or permit, the licence or permit, as the case may be, is deemed to be amended to include the amendments as soon as the particulars of the amendments have been delivered to the holder of the licence or permit.

(3) The commission may order that a party or intervener pay another party or intervener any or all of the actual costs in respect of the appeal.

(4) After a certified copy of an order under subsection (3) is filed with the Supreme Court, the order has the same effect as an order of the court for the recovery of a debt in the amount stated in the order against the person named in it, and all proceedings may be taken as if it were an order of the court.

Review or appeal not a stay

72 Unless the minister orders otherwise, a review or an appeal under this Act does not operate as a stay or suspend the operation of the order, decision or amendments being reviewed or appealed.

Wildfire Act

Part 3

ADMINISTRATIVE REMEDIES AND COST RECOVERY

Division 3 – Corrections, Reviews and Appeals

Order stayed until proceedings concluded

36 (1) An order that may be reviewed under section 37 or appealed under section 39 is stayed until the person who is the subject of the order has no further right to have the order reviewed or appealed.

(2) Despite subsection (1), the minister may order that an order, other than an order levying an administrative penalty under section 27 or 28(3)(d) is not stayed on being satisfied that a stay or a stay without those conditions, as the case may be, would be contrary to the public interest.

(3) Despite subsection (1), an order is not stayed if the order is made under section 34.

Review of an order

37 (1) Subject to subsection (2), at the request of a person who is the subject of an order under section 7(3), 17(3.1), 25, 26, 27, 28(1) or (3)(d) or 34, the person who made the order, or another person employed in the ministry and designated in writing by the minister, must review the order, but only if satisfied that there is evidence that was not available at the time of the original order.

(2) On a review referred to in subsection (1), only

(a) evidence that was not available at the time of the original order, and

(b) the record pertaining to the original order

may be considered.

(3) To obtain a review referred to in subsection (1), the person who is the subject of the order must request the review not later than 3 weeks after the date the notice of order was given to the person.

(4) The minister may extend the time limit in subsection (3) before or after the time limit's expiry.

(5) The person conducting a review referred to in subsection (1) has the same discretion to make a decision that the original decision maker had at the time of the original order.

Board may require review of an order

38 (1) If the board first receives the consent of the person who is the subject of an order referred to in section 37(1), the board may require a review of the order by the person who made the order, or another person employed in the ministry and designated in writing by the minister.

(2) To obtain a review of an order under subsection (1), the board must require the review not later than 3 weeks after the date the notice of the order was given to the person who is the subject of the order.

(3) The minister may extend the time limit for requiring a review under this section before or after the time limit's expiry.

(4) The person conducting the review has the same discretion to make a decision that the original decision maker had at the time of the order under review.

Appeal to the commission from an order

39 (1) The person who is the subject of an order referred to in section 37(1) may appeal to the commission from either of the following, but not both:

(a) the order;

(b) a decision made after completion of a review of the order.

(2) Sections 131 to 141 of the *Forest Practices Code of British Columbia Act* apply to an appeal under this section.

Appeal to the commission by the board

40 (1) The board may appeal to the commission from either of the following, but not both:

(a) an order referred to in section 37;

(b) a decision made after completion of a review of the order.

(2) Sections 131 to 141 of the *Forest Practices Code of British Columbia Act* apply to an appeal under this section.

Powers of commission

41 (1) On an appeal under section 39 by a person or under section 40 by the board, the commission may

(a) consider the findings of the decision maker who made the order, and

(b) either

(i) confirm, vary or rescind the order, or

(ii) with or without directions, refer the matter back to the decision maker who made the order, for reconsideration.

(2) The commission may order that a party or intervener pay another party or intervener any or all of the actual costs in respect of the appeal.

(3) After the period to request an appeal to the Supreme Court under the *Forest Practices Code of British Columbia Act* has passed, the minister may file a certified copy of the decision of the commission with the Supreme Court.

(4) A certified copy of a decision filed under subsection (3) has the same force and effect as an order of the court for the recovery of a debt in the amount stated in the decision, against the person named in the decision, and all proceedings may be taken as if the decision were an order of the court.

This Regulation applies to appeals under the *Code, Forest and Range Practices Act*, the *Forest Act*, the *Range Act* and the *Wildfire Act*.

Administrative Review and Appeal Procedure Regulation (B.C. Reg. 12/04)

Part 1

DEFINITIONS

1 In this regulation:

"appellant" means

(a) for a *Forest Act* appeal, the person that initiates an appeal under section 147(1) of that Act,

(b) for a *Range Act* appeal, the person that initiates an appeal under section 70(1) of that Act,

(c) for a *Forest and Range Practices Act* appeal, the person that initiates an appeal under section 82(1) of that Act, and includes the board if the board initiates an appeal under section 83(1) of the Act, or

(d) for a *Wildfire Act* appeal, the person that initiates an appeal under section 39(1) of that Act, and includes the board if the board initiates an appeal under section 40(1) of that Act;

Part 3

FOREST APPEALS COMMISSION PROCEDURE

Exemption from time specified to appeal a determination

16 (1) In respect of an appeal under section 83 of the *Forest and Range Practices Act*, the board is exempt from the requirement under section 131 of the *Forest Practices Code of British Columbia Act* to deliver to the commission

(a) a notice of appeal,

(b) a copy of the original decision, and

(c) a copy of any decision respecting a correction or review

no later than 3 weeks after the latest to occur of

(d) the original decision,

(e) any correction under section 79 of the *Forest and Range Practices Act*, and

(f) any review under section 80 or 81 of the *Forest and Range Practices Act*

if the board delivers to the commission the documents described in paragraphs (a) to (c) within 60 days after the latest to occur of the events described in paragraphs (d) to (f).

(2) In respect of an appeal under section 40 of the *Wildfire Act*, the board is exempt from the requirement under section 131 of the *Forest Practices Code of British Columbia Act* to deliver to the commission

(a) a notice of appeal,

(b) a copy of the original decision, and

(c) a copy of any decision respecting a correction or review

no later than 3 weeks after the latest to occur of

(d) the original decision,

(e) any correction under section 35 of the *Wildfire Act*, and

(f) any review under section 37 or 38 of the *Wildfire Act*

if the board delivers to the commission the documents described in paragraphs (a) to (c) within 60 days after the latest to occur of the events described in paragraphs (d) to (f).

(3) In respect of an appeal under section 70(1) of the *Range Act*, section 82 (1) of the *Forest and Range Practices Act* or section 39(1) of

the *Wildfire Act*, a person whose request for a review is denied by the reviewer for the reason described in subsection (4) is exempt from the requirement under section 131 of the *Forest Practices Code of British Columbia Act* to deliver to the commission

(a) a notice of appeal,

(b) a copy of the original decision, and

(c) a copy of any decision respecting a correction or review

no later than 3 weeks after the latest to occur of

(d) the original decision, or

(e) any correction under the *Range Act*, the *Forest and Range Practices Act* or the *Wildfire Act*

if the appellant delivers to the commission the documents described in paragraphs (a) to (c) within 21 days after the appellant is given notice by the reviewer that the appellant's request for the review is denied for the reason described in subsection (4).

(4) The reason referred to in subsection (3) is that the reviewer is not satisfied as to the existence of evidence not available at the time of the original determination, order, decision or amendment.

[am. B.C. Reg. 83/2006, s. 9.]

Prescribed period for board to apply for order

17 The prescribed period for the purpose of section 83(2)(b) of the *Forest and Range Practices Act* is 6 months.

Notice of appeal

18 The notice of appeal referred to in section 147(1) of the *Forest Act* and section 131(1) of the *Forest Practices Code of British Columbia Act*, must be signed by, or on behalf of, the appellant and must contain all of the following information:

(a) the name and address of the appellant, and the name of the person, if any, making the request on the appellant's behalf;

(b) the address for giving a document to, or serving a document on, the appellant;

(c) the grounds for appeal;

(d) a statement describing the relief requested.

[am. B.C. Reg. 83/2006, s. 10.]

Deficient notice of appeal

19 (1) If a notice of appeal does not comply with section 18, the commission may invite the appellant to submit further material remedying the deficiencies within a period specified in a written notice of deficiencies, by

(a) serving the written notice of deficiencies on the appellant, if the appeal is under the *Forest Act* or

(b) giving the written notice of deficiencies to the appellant, if the appeal is under the *Range Act*, *Forest and Range Practices Act* or the *Wildfire Act*.

(2) If the commission serves or gives a notice of deficiencies under subsection (1), the appeal that is the subject of the notice of appeal may proceed only after the submission to the commission of further material remedying the deficiencies.

[am. B.C. Reg. 83/2006, s. 11.]

Notification of parties following receipt of notice of appeal

20 The commission must acknowledge in writing any notice of appeal, and

(a) in the case of an appeal under the *Forest Act*, serve a copy of the notice of appeal on the deputy minister of the minister responsible for the administration of

those portions of the *Forest Act* for which the Minister of Finance is not responsible,

(a.1) in the case of an appeal under the *Range Act*, give a copy of the notice of appeal to the minister,

(b) in the case of an appeal under the *Forest and Range Practices Act*, give a copy of the notice of appeal to

(i) the minister, and

(ii) either

(A) the board, if the notice was delivered by the person who is the subject of the determination, or

(B) the person who is the subject of the determination, if the notice was delivered by the board, and

(c) in the case of an appeal under the *Wildfire Act*, give a copy of the notice of appeal to

(i) the minister, and

(ii) either

(A) the board, if the notice was delivered by the person who is the subject of the order, or

(B) the person who is the subject of the order, if the notice was delivered by the board.

[am. B.C. Regs. 83/2006, s. 12; 4/2010, s. 2.]

Procedure following receipt of notice of appeal

21 Within 30 days after receipt of the notice of appeal, the commission must

(a) determine whether the appeal is to be considered by members of the commission sitting as a commission or by members of the commission sitting as a panel of the commission,

(b) designate the panel members if the commission determines that the appeal is to be considered by a panel,

(c) set the date, time and location of the hearing, and

(d) give notice of hearing to the parties if the appeal is under the *Range Act*, *Forest and Range Practices Act* or the *Wildfire Act*, or serve notice of hearing on the parties if the appeal is under the *Forest Act*.

[en. B.C. Reg. 83/2006, s. 13.]

Panel chair determined

22 For an appeal that is to be considered by a panel of the commission, the panel chair is determined as follows:

(a) if the chair of the commission is on the panel, he or she is the panel chair;

(b) if the chair of the commission is not on the panel but a vice chair of the commission is, the vice chair is the panel chair;

(c) if neither the chair nor a vice chair of the commission is on the panel, the commission must designate one of the panel members to be the panel chair.

Additional parties to an appeal

23 (1) If the board is added as a party to an appeal under section 131(7) of the *Forest Practices Code of British Columbia Act*, the commission must promptly give written notice of the addition to the other parties to the appeal.

(2) If a party is added to the appeal under section 131(8) of the *Forest Practices Code of British Columbia Act*, the commission must promptly give written notice of the addition to the other parties to the appeal.

Intervenors

24 (1) If an intervenor is invited or permitted to take part in the hearing of an appeal under section 131(13) of the *Forest Practices Code of British Columbia Act*, the commission must give the intervenor a written notice specifying the extent to which the intervenor will be permitted to take part.

(2) Promptly after giving notice under subsection (1), the commission must give the parties to the appeal written notice

(a) stating that the intervenor has been invited or permitted under section 131(13) of the *Forest Practices Code of British Columbia Act* to take part in the hearing, and

(b) specifying the extent to which the intervenor will be permitted to participate.

Transcripts

25 On application to the commission, a transcript of any proceedings before the commission or the panel of the commission must be prepared at the cost of the person requesting it or, if there is more than one applicant for the transcript, proportionately by all of the applicants.

Prescribed period for appeal decision under the *Forest Act*

26 The prescribed period for the purposes of section 149.1(3) of the *Forest Act* is 42 days after conclusion of the hearing.

Part 4

ANNUAL REPORT OF FOREST APPEALS COMMISSION

Content

27 (1) By April 30 of each year, the chair of the commission must submit the annual report for the immediately preceding calendar year required by section 197(2) of the *Forest Practices Code of British Columbia Act*.

(2) The annual report referred to in subsection (1) must contain

(a) the number of appeals initiated under the *Forest Act*, the *Range Act*, the *Forest and Range Practices Act* or the *Wildfire Act*, during the year,

(b) the number of appeals completed under the *Forest Act*, the *Range Act*, the *Forest and Range Practices Act* or the *Wildfire Act*, during the year,

(c) the resources used in hearing the appeals,

(d) a summary of the results of the appeals completed during the year,

(e) the annual evaluation referred to in section 197(1)(b) of the *Forest Practices Code of British Columbia Act*, and

(f) any recommendations referred to in section 197(1)(c) of the *Forest Practices Code of British Columbia Act*.

[am. B.C. Reg. 83/2006, s. 14.]

Part 4

COMPLIANCE AND ENFORCEMENT

Division 2 – Administrative Remedies

Appeal to commission

33 (1) A person who is the subject of an order, a decision or a determination of the council under section 26(1), 27(1) and (2), 30, 31(1) or 32 may appeal the order, decision or determination to the commission in accordance with the regulations.

(2) An order, a decision or a determination that may be appealed under this section, other than a stop work order, is stayed until the person who is the subject of the order, decision or determination has no further right to have the order, decision or determination appealed.

(3) The commission must conduct an appeal in accordance with this section and the regulations.

(4) The appellant and the council are parties to the appeal and may be represented by counsel.

(5) At any stage of an appeal, the commission or a member of it may direct that a person who may be directly affected by the appeal be added as a party to the appeal.

(6) The commission may invite or permit any person who may be materially affected by the outcome of an appeal to take part in the appeal as an intervenor in the manner and to the extent permitted or ordered by the commission.

(7) The commission or a member of it may order the parties to an appeal to deliver written submissions.

(8) If the appellant does not deliver a written submission ordered under subsection (7) within the time specified in the order or the regulations, the commission may dismiss the appeal.

(9) The commission must ensure that each party to the appeal has the opportunity to review written submissions from the other party or any intervenor and an opportunity to rebut the written submissions.

(10) The commission or a member of it may make an interim order in an appeal.

(11) Hearings of the commission are open to the public.

(12) The commission or a member of it has the same power as the Supreme Court has for the trial of civil actions

(a) to summon and enforce the attendance of witnesses,

(b) to compel witnesses to give evidence on oath or in any other manner, and

(c) to compel witnesses to produce records and things.

(13) The failure or refusal of a person

(a) to attend,

(b) to take an oath,

(c) to answer questions, or

(d) to produce the records or things in the person's custody or possession,

makes the person, on application to the Supreme Court, liable to be committed for contempt as if in breach of an order or judgment of the Supreme Court.

(14) The commission may retain, call and hear an expert witness.

(15) An appeal under this section to the commission is a new hearing and at the conclusion of the hearing, the commission may

(a) by order, confirm, vary or rescind the order, decision or determination,

(b) refer the matter back to the council or authorized person for reconsideration with or without directions,

(c) order that a party or intervenor pay another party or intervenor any or all of the actual costs in respect of the appeal, or

(d) make any other order the commission considers appropriate.

(16) An order under subsection (15) that is filed in the court registry has the same effect as an order of the court for the recovery of a debt in the amount stated in the order against the person named in it, and all proceedings may be taken as if the order were an order of the court.

Appeal to court

34 (1) A party to the appeal before the commission may appeal, within 3 weeks of being given the decision of the commission in writing and by application to the Supreme Court, the decision of the commission on a question of law or jurisdiction.

(2) After an application is brought to the Supreme Court, a judge may order, on terms he or she considers appropriate, that all or part of the decision of the commission be stayed.

(3) An appeal from a decision of the Supreme Court lies with the Court of Appeal with leave of a justice of the Court of Appeal.

Private Managed Forest Land Regulation (B.C. Reg. 371/04)

Notice of appeal

9 (1) A person who, under section 33(1) of the Act, may appeal an order, decision or determination to the commission must submit a notice of appeal to the commission that is signed by, or on behalf of, the appellant and contains all of the following:

(a) the name and address of the appellant, and the name of the person, if any, making the request on the appellant's behalf;

(b) the address for service of the appellant;

(c) the grounds for appeal;

(d) the relief requested.

(2) The appellant must deliver the notice of appeal to the commission not later than 3 weeks after the later of the date of

(a) the decision of the council under section 32(2) of the Act, and

(b) the order, decision or determination referred to in section 33(1) of the Act.

(3) Before or after the time limit in subsection (2) expires, the commission may extend it.

(4) A person who does not deliver a notice of appeal within the time specified loses the right to an appeal.

Deficient notice of appeal

10 (1) If a notice of appeal does not comply with section 9 the commission may deliver a written notice of deficiencies to the appellant, inviting the appellant, within a period specified in the notice, to submit further material remedying the deficiencies.

(2) If the commission delivers a notice under subsection (1), the appeal may proceed only after the earlier of

(a) the expiry of the period specified in the notice of deficiencies, and

(b) the submission to the commission of further material remedying the deficiencies.

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